To: R1NewsClips[R1NewsClips@epa.gov]
From: Elliott, Rodney
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Subject: Daily NEWSCLIPS - Friday, August 7th, 2015 r1newsclips

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Headline	Date	Outlet	Outlet State
Air (19)			
Obama's power plan worth cost. But is it enough? #tellusatoday	**08/07/2015**	**USA Today Online**	**VA**
ND mulls lawsuit challenging feds' new greenhouse gas limits	**08/06/2015**	**Advocate Online, The**	**CT**
Alternative-energy funds are better at absorbing oil's spill	**08/06/2015**	**Associated Press Online**	**NY**
Obama leaves coal with nowhere to go - The Boston Globe	**08/06/2015**	**Boston Globe Online**	**MA**
China Clean Energy Technology Market To Grow At A CAGR Of 11.6% By 2018: Radiant Insights	**08/06/2015**	**Boston.com**	**MA**
EPA settles with company over oil storage violations	**08/06/2015**	**Greenwich Time Online**	**CT**
Leaders need to get behind Clean Power Plan	**08/06/2015**	**Hampton Union - Online, The**	**NH**
NRC completes environmental report of nuke plant	**08/06/2015**	**Hampton Union - Online, The**	**NH**

OZONE NAAQS LOBBYING INTENSIFIES AS DEADLINE LOOMS FOR EPA DECISION		
EPA RESEARCH OFFICE NOMINEE DOWNPLAYS GOP ATTACKS ON AGENCY SCIENCE	**08/06/2015**	**Inside EPA**	**VA**
BLM FRACKING RULE PROPONENTS ARGUE SDWA DOES NOT PRECLUDE RULE	**08/06/2015**	**Inside EPA**	**VA**
EPA EXPECTS FINAL ESPS TO SPEED GHG CUTS AS COAL TAKES A BIGGER HIT	**08/06/2015**	**Inside EPA**	**VA**
D.C. CIRCUIT URGED TO IMPOSE EMERGENCY SUSPENSION OF EPA UTILITY MACT	**08/06/2015**	**Inside EPA**	**VA**
EPA USES UNIFORM STANDARDS TO PRESERVE OVERALL STRINGENCY IN FINAL ESPS	**08/06/2015**	**Inside EPA**	**VA**
Green tech. companies to take center stage in Queen City	**08/06/2015**	**New Hampshire Union Leader Online**	**NH**
Coal Industry Wobbles as Market Forces Slug Away	**08/06/2015**	**New York Times Online**	**NY**
The Markets Dig a Grave for Big Coal	**08/06/2015**	**New York Times, The**	**NY**
State energy board: We'll carry Mass. pipeline message to FERC	**08/06/2015**	**Republican Online**	**MA**
The Religion of Climate Change	**08/06/2015**	**Wall Street Journal Online**	**NY**

Brownfields / Superfund / Other Cleanups (6)

Mine plug blows in Colorado, dumping 1M gallons of waste	**08/06/2015**	**Advocate Online, The**	**CT**
Sludge from Colorado mine spill heads down river to NM	**08/06/2015**	**Associated Press (AP)**	**NY**
ADVISORS' DRAFT REVIEW URGES EPA TO RECONSIDER NOVEL SKIN CANCER RISK	**08/06/2015**	**Inside EPA**	**VA**
Brattleboro gets slice of large EPA grant	**08/06/2015**	**Keene Sentinel Online**	**NH**
Northampton: Clean-up of former Lia Honda site underway	**08/06/2015**	**Republican Online**	**MA**

EPA awards millions in Vermont #Brownfields funding | http://t.co/54GcoHegJT @EPA @EPAnewengland

Budget/Recovery Act (2)

Salem faced with major sewer issues	08/06/2015	Eagle-Tribune Online, The	MA
UNCERTAINTY INCREASES OVER TIMING OF SENATE FLOOR VOTE ON TSCA REFORM	**08/06/2015**	**Inside EPA**	**VA**

Climate Change (2)

EnergyPrint Competes in EPA's 2015 ENERGY STAR® National Building Competition: Team Challenge	**08/06/2015**	**Advocate Online, The**	**CT**
'California's Burning': Governor Talks Climate Change During Wildfire Update	**08/06/2015**	**NECN/New England Cable News Online**	**MA**

Energy Issues (2)

EPA ADDRESSES NICOTINE QUESTIONS AHEAD OF WASTE PHARMACEUTICALS RULE	**08/06/2015**	**Inside EPA**	**VA**
Solar land use panel tackles its assignment	**08/06/2015**	**Stowe Reporter - Online**	**VT**

Enforcement (3)

Be Green Packaging Wins the "Golden Arrow" Award from the California Product Stewardship Council	**08/06/2015**	**Advocate Online, The**	**CT**
EPA: Firm settles over records violations	**08/06/2015**	**Eagle-Tribune Online, The**	**MA**
EPA: Connecticut firm settles over allegations of records violations	**08/06/2015**	**New Haven Register**	**CT**

Research and Development (4)

Water Utilities Press EPA For Nano Research, Sampling In Future Data Rule	**08/06/2015**	**Inside EPA**	**VA**
SAB URGES MORE STATE, UTILITY INVOLVEMENT IN EPA DRINKING WATER LIST	**08/06/2015**	**Inside EPA**	**VA**
EPA DRAFT PESTICIDE RISK	**08/06/2015**	**Inside EPA**	**VA**

SCREENING PLAN AVOIDS NAS CALL FOR PRIORITIZATION			
CORPS' MEMOS COULD BOOST LAWSUIT CLAIMING 'WATERS' RULE VIOLATES NEPA	**08/06/2015**	**Inside EPA**	**VA**

Toxics (4)

Letter: Asbestos dangers	**08/07/2015**	**Advocate Online, The**	**CT**
EPA adds limits on phosphorus in Merrimack River	**08/06/2015**	**Advocate Online, The**	**CT**
EPA adds limits on phosphorus in Nashua, N.H.	**08/06/2015**	**Foster's Daily Democrat Online**	**NH**
OSHA Proposes Beryllium Limit Long in Works	**08/06/2015**	**New York Times, The**	**NY**

Trash / Recycling / Solid Waste (2)

ATRS Recycling Sets New Record for Clothing Donations Collected in Tucson AZ	**08/07/2015**	**Boston.com**	**MA**
Newark recycling plant fined $53,900 for safety violations	**08/06/2015**	**Associated Press (AP)**	**NY**

Water (8)

Feds support anti-algae program in southern Michigan	**08/06/2015**	**Associated Press (AP)**	**NY**
Settlement reached in Commencement Bay pollution case	**08/06/2015**	**Associated Press Online**	**NY**
EPA Urged To Support Stormwater 'Coalitions' To Ease Regulatory Burdens	**08/06/2015**	**Inside EPA**	**VA**
EPA PUSH TO EASE CWA RULE IMPLEMENTATION FAILS TO QUELL CALLS FOR DELAY	**08/06/2015**	**Inside EPA**	**VA**
HOUSE GOP'S RELEASE OF CRITICAL CWA MEMOS MIGHT BOOST SUITS OVER RULE	**08/06/2015**	**Inside EPA**	**VA**
EPA WITHDRAWS CWA PERMIT CONTESTED IN EAB DEFERENCE CASE	**08/06/2015**	**Inside EPA**	**VA**
HOUSE GOP 'LEASE' PLAN SEEKS TO EASE CWA MITIGATION PROJECT OBLIGATIONS	**08/06/2015**	**Inside EPA**	**VA**

City, EPA negotiate phosphorus limits put in Merrimack River		**Telegraph Online**	

Other (1)

EPA: Connecticut firm settles over allegations of records violations	**08/06/2015**	**Middletown Press - Online**	**CT**

News Headline: Obama's power plan worth cost. But is it enough? #tellusatoday |

Outlet Full Name: USA Today Online
News Text: ...China and India will be building coal-fired power plants like crazy. Those emissions will dwarf the slight decrease in U.S....

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News Headline: ND mulls lawsuit challenging feds' new greenhouse gas limits |

Outlet Full Name: Advocate Online, The
News Text: ...a legal fight against new federal rules designed to cut greenhouse gas emissions from U.S. power plants. North Dakota is among 16 states...

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News Headline: Alternative-energy funds are better at absorbing oil's spill |

Outlet Full Name: Associated Press Online
News Text: ...held up better than its peers: those investing in solar, wind and other alternative-energy sources. It's an unexpected bright spot...

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News Headline: Obama leaves coal with nowhere to go - The Boston Globe |

Outlet Full Name: Boston Globe Online
News Text: ...Gate Power Plant in Utah was closed in the spring in anticipation of new EPA regulations. President Obama's Clean Power Plan is...

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News Headline: China Clean Energy Technology Market To Grow At A CAGR Of 11.6% By 2018: Radiant Insights |

Outlet Full Name: Boston.com
News Text: ...energy technology refers to the use of a technology that can reduce carbon emissions and other harmful pollutants to the minimum possible...

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News Headline: EPA settles with company over oil storage violations |

Outlet Full Name: Greenwich Time Online
News Text: ...of potentially hazardous chemicals, the Boston office of the federal Environmental Protection Agency announced on Thursday....

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News Headline: Leaders need to get behind Clean Power Plan |

Outlet Full Name: Hampton Union - Online, The
News Text: ...and abundance of unique wildlife. However, over the past few years, our environment has suffered: some of my favorite animals, from moose...

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News Headline: NRC completes environmental report of nuke plant |

Outlet Full Name: Hampton Union - Online, The
News Text: ...Regulatory Commission determined the renewal would not impact the local environment. The NRC announced its conclusion in a July 30 press...

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News Headline: OZONE NAAQS LOBBYING INTENSIFIES AS DEADLINE LOOMS FOR EPA DECISION |

Outlet Full Name: Inside EPA
News Text: Industry groups, environmentalists and others are ramping up lobbying on whether EPA should follow through with its proposed stricter existing ozone national ambient air quality standards (NAAQS), as the agency prepares to send the final rule for mandatory White House review in order to meet an Oct. 1 legal deadline for issuing the rule.

One official with the American Petroleum Institute has said the agency's plan to

tighten the existing 2008 ozone limit of 75 parts per billion (ppb) down to a standard within the range of 65-70 ppb is "flying under the radar" given attention on other major EPA rules, including its landmark greenhouse gas standards for power plants. Organizations representing a wide range of industries warn that a stricter ozone standard could impose even larger costs than the utility climate rules.

Environmentalists and other EPA supporters are trying to counter the push-back on a stricter NAAQS by arguing that a more stringent limit is vital to protect public health as required by the Clean Air Act.

EPA will soon have to send the final ozone NAAQS rule to the White House Office of Management & Budget (OMB) for mandatory pre-publication review if it plans to meet a court-mandated Oct. 1 deadline for issuing the rule. OMB review typically takes 90 days but can take more or less time for some regulations.

Advocacy groups, industry organizations and others will have the chance to request meetings with EPA and White House officials to lobby over the rule once the pre-publication review begins. But even before that happens, EPA is facing an increasing amount of pressure from all sides over its NAAQS decision.

Sources differ on where exactly agency Administrator Gina McCarthy will set the standard, but most agree that it will be below 70 ppb but higher than 65 ppb. At 65 ppb, major industry groups predict severe harm to the economy, despite EPA's projections that almost all of the country would attain such a standard by 2025 with existing or planned air regulations in place. In the interim, many new areas would fall into "nonattainment" with the new standard, and this will impose billions of dollars in compliance costs and freeze industrial expansion, critics say.

Environmentalists and public health groups counter that only a standard set at 65 ppb or even lower -- which EPA took comment on -- can be sufficiently protective of public health under the Clean Air Act, which requires NAAQS to be set at a level sufficient to protect public health with an adequate "margin of safety."

In a July 28 letter to McCarthy, 137 House lawmakers, mostly from the GOP but including 16 Democrats, urged EPA to retain the existing ozone standard. "If a proposed standard cannot be met, nonattainment areas would be required to implement costly ozone-reduction measures and permitting requirements that could prove technologically difficult," the lawmakers write, citing "alternative views on health effects evidence and risk information." Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183663)

The lawmakers say EPA should fully implement the existing ozone NAAQS of 75 ppb which the agency is only now implementing after years of litigation over that standard. The U.S. Court of Appeals for the District of Columbia Circuit in a 2013 ruling upheld the 2008 NAAQS, deferring to EPA's expertise on the science of how to set the standards. That ruling cleared the path to fully implement the standard.

Meanwhile, the National Association of Manufacturers (NAM), a staunch opponent of tougher ozone standards, is running television commercials calling attention to the likely nonattainment status of several national parks under a tougher ozone NAAQS. Because national parks have no pollution sources to control, their nonattainment status cannot be addressed by local actions, highlighting the absurdity of tougher NAAQS, NAM argues.

The free-market Center for Regulatory Solutions (CRS) in a July 31 statement backed this argument, saying that with an ozone NAAQS set between 65 ppb and 70 ppb, "even many of our iconic and pristine national parks would fail the test even though there is no manufacturing taking place in these locations. Air pollution in national parks is often caused by naturally occurring phenomena such as stratospheric intrusions and wildfires, as well as pollutants migrating from countries with limited environmental regulation, such as China."

This issue of "background" ozone is of particularly acute concern in the Mountain West, where many of the country's largest and most famous national parks are located. NAM and CRS do not, however, reference ozone pollution of domestic origin that drifts for long distances and also worsens air quality in the parks.

Environmentalists, some lawmakers, and public health groups are pushing back on the lobbying campaign against a stricter ozone standard by countering that a tighter limit is vital to prevent harms to the public.

In a July 30 letter to McCarthy, 64 House Democrats of the Congressional Progressive Caucus express "strong support for a science-based standard of 60" ppb. Such a standard "would drive investments in clean energy and public transit infrastructure, save taxpayers billions of dollars annually in health care costs, and save lives," they write.

They argue that the 75 ppb NAAQS established in 2008 by the Bush administration, "fails to protect public health, not only for low-income families and communities of color, but also for other vulnerable populations like children, the elderly, people with breathing ailments like asthma, and outdoor workers."

The progressive lawmakers note the support of prominent public health groups for a 60 ppb standard, including the American Lung Association, American Heart Association, American Thoracic Society, the American Public Health Association, American Medical Association and the American Academy of Pediatrics.

The National Parks Conservation Association (NPCA), a strong supporter of tougher ozone standards, meanwhile is attempting to undermine the claims made by NAM in its television commercials. NPCA takes exception to NAM's characterization of national parks as "pristine," saying the television ad campaign is misleading because there are already national parks that violate clean air laws.

Earthjustice officials met with EPA acting air policy chief Janet McCabe July 24 to discuss ozone issues, an EPA spokeswoman confirms, but neither EPA nor Earthjustice would provide further details about the meeting. -- Stuart Parker

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News Headline: EPA RESEARCH OFFICE NOMINEE DOWNPLAYS GOP ATTACKS ON AGENCY SCIENCE |

Outlet Full Name: Inside EPA
News Text: President Obama's long-pending nominee to head EPA's Office of Research & Development (ORD) is pushing back on Republican senators' attacks on agency science, defending against concerns about potential conflicts of interest and other alleged flaws in scientific data that EPA often uses as the basis for its regulatory decisions.

In a July 30 response to questions from GOP members of the Senate Environment & Public Works Committee (EPW), nominee Thomas Burke says that existing agency procedures and a host of planned future actions address concerns about inadequate science. And he vows to follow through with improvements to ORD's work, such as a plan to prioritize Integrated Risk Information System (IRIS) chemical risk assessments.

Burke's answers, recently obtained by Inside EPA, offer few concessions to Republican critics of the agency's science, and it is unclear whether the response will help shift his stalled nomination. The questions and answers are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183743)

The ORD nominee is one of several nominations for top agency positions that have been pending in the Senate for weeks, including acting EPA air chief Janet McCabe to head the Office of Air & Radiation on a permanent basis and de facto agency water chief Ken Kopocis to be the Office of Water's next permanent assistant administrator.

Senate Republicans have suggested that they will place "holds" blocking all EPA nominees from proceeding to further hearings or confirmation votes until agency Administrator Gina McCarthy answers questions that GOP senators submitted to EPA long ago on a wide range of controversial rulemakings (Inside EPA, June 19).

Burke is one of a few of the nominees who has had an EPW confirmation hearing, answering questions from senators in person in early June. After that hearing, senators had the chance to send the nominee further written queries. Burke's response includes replies to those questions, which were mostly submitted by EPW Chairman Sen. James Inhofe (R-OK) but also includes several questions from fellow EPW

member Sen. Jeff Sessions (R-AL).

Burke, a former New Jersey Department Environmental Protection official and most recently a dean of public health at Johns Hopkins University in Baltimore, was first nominated to be EPA's assistant administrator (AA) for ORD in 2013. Burke joined the agency last January as the agency's Science Advisor and as a deputy AA to ORD, both roles that do not require Senate confirmation unlike the ORD chief position which does (Inside EPA, Jan. 16).

Inhofe in his questions asked Burke about the dual role he is currently seeking as both science advisor and ORD chief. EPA has received advice from National Academy of Science (NAS), the Government Accountability Office and its Science Advisory Board (SAB) recommending that EPA split the dual role and have separate people undertake the two jobs -- both to reduce workload and to address real or perceived conflict that can arise between ORD and science staff in regional or program offices. EPA has long resisted the advice, and only briefly in recent years -- during former Administrator Lisa Jackson's tenure -- had separate individuals filled the two roles.

Burke responds that he and McCarthy consulted with NAS and believe that its recommendations would be fulfilled by the dual roles. "Having served as the Deputy Assistant Administrator and the EPA Science Advisor since January of this year, it is clear to me that it is possible for the AA of ORD to direct the world-class research program in ORD and serve as the EPA Science Advisor," Burke writes, adding, "[T]here is an important advantage to this model," citing ORD's alignment with EPA's mission and experienced scientists supporting the ORD chief.

"EPA has a built-in mechanism that would provide a check on any potential or perceived conflict of responsibility -- the Science and Technology Policy Council (STPC) -- a group of senior . . . EPA representatives that provide input on science and technology policy issues and ensures that EPA's science is well-coordinated," Burke adds.

Inhofe also questioned Burke whether EPA has followed advice from a 2004 NAS report cautioning the agency against reliance on old data when developing new national ambient air quality standards (NAAQS).

Burke responds that he agrees with NAS that "NAAQS decisions must be based on the best possible science and am pleased to find that this is the case. After the 2004 NAS report, EPA revised the process to evaluate the science . . . the 2011 [NAS] report . . . complimented the revisions to the NAAQS documentation and review process."

Some of Inhofe's questions touch upon legislation that Republicans are pushing to require publication of all studies that EPA and other agencies use in decision-making, or altering the make-up of EPA's SAB, a panel of independent, external

science advisors to include more industry and state and local officials.

On the issue of making agency science "transparent," Burke responds by describing a database where EPA offices can store data and make it publicly available, as well as a policy on data access.

Inhofe also pressed Burke to "increase the participation of industry scientists and scientists from American heartland" on the SAB, arguing that "most SAB members are from academic institutions on both coasts."

Burke, a former SAB member, responds that the board's existing membership includes 32 percent with industry or consulting experience, 13 percent with state, local government or tribal experience and that 11 of the 45 members of the chartered SAB reside in Midwestern states.

Burke describes SAB as a "tremendous resource" and adds that he has started discussions with STPC "to ensure that the highest priority, cross-agency science questions are identified and that the agency takes full advantage of its SAB as a source of advice on those questions."

Inhofe also questioned Burke regarding changes underway with EPA's influential and often controversial IRIS program. IRIS analyzes environmental contaminants' human health risks, and provides cancer and non-cancer risk estimates that often form the basis for EPA waste, water and air decisions, and are consulted by other agencies world-wide as well. But the program has long been under scrutiny by regulated entities, Congress and the GAO for its lengthy, convoluted process and assessments that industry considers too strict.

Inhofe raised one concern that has been growing among regulated entities as the agency has in recent years undertaken assessments of chemicals like ethylene oxide, formaldehyde and methanol that are produced endogenously -- within the body -- as well as exogenously by industrial processes. Industry has urged the IRIS program to draft new guidance on the issue and to reality check these and other IRIS assessments (Inside EPA, Jan. 10).

"Do you agree that when ORD programs assess potential risks from such substances, it's critical to derive the range of potential risks arising from both sources -- internal and environmental -- and to communicate the degree to which these estimated risks from internal and external sources are plausible and realistic?" Inhofe asked.

"This is an important consideration in understanding and managing incremental risk from environmental exposure," Burke replies. "Since there are many natural products of metabolism that may have toxic effects if they are out of balance, the fact that they are produced naturally does not make them 'safe' at all doses."

Inhofe also raised another long-standing concern, saying that EPA's 2011 IRIS

assessment of the solvent trichloroethylene, a frequent contaminant at Superfund sites and groundwater sources, is too strict, based on a short-term health effect of fetal cardiac malformations, and leads to overly stringent cleanup requirements, particularly when it intrudes onto sites as a vapor.

But Burke responds that an IRIS assessment "does not dictate how risk managers use scientific information in decision-making."

Meanwhile, Burke commits to release "a prioritized IRIS agenda covering the next several years' effort" in response to another question about the program. IRIS leaders have been promising the release of such a five-year prioritized plan of IRIS assessments for some months, but that plan has yet to be released.

Inhofe also questioned Burke about NAS recommendations for use of transparent, systematic evaluation of studies included in IRIS assessments, and Burke indicates the program is evaluating different approaches to do so. He adds that if confirmed by the Senate, he will work with the program to "improve its methods for study evaluation and integration."

Echoing industry concerns about environmentalists urging the IRIS program to include study funding source as an element of its systematic reviews of toxicity literature, Inhofe asks Burke's views on the subject.

Burke replied that he will ensure clear criteria are used for judging study quality and integrating the information, and not authorship or funding source.

Elsewhere in his questions, Inhofe raised concerns over EPA's human testing program, which has been under scrutiny for some years, and is currently under NAS review (Inside EPA, June 12).

Inhofe questioned whether EPA has complied with all the recommendations made in an EPA Inspector General (IG) report on the program last year, and whether testing on children is ever justified.

Burke responds that "all corrective actions have been implemented" in response to the IG's report, adding that "there are some things you can only learn by interacting directly with people, controlling variables and methods to allow firm conclusions to be drawn."

His response regarding exposing children to environmental pollutants does not mention an observational study of children's everyday exposures EPA sought to fund a decade ago, but canceled due to concerns from Sen. Barbara Boxer (D-CA), the ranking member of EPW. Burke does appear to try to alleviate the concerns raised with that aborted 2005 study grant.

"There's an important difference between observational studies of populations and

intentionally dosing humans with a pollutant," Burke replies. "EPA does not intentionally expose children to pollutants. However, EPA has funded some important epidemiological studies that include children . . . This research ultimately helps the EPA to better understand how to protect children from the harmful effects of pollutants." -- Maria Hegstad

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News Headline: BLM FRACKING RULE PROPONENTS ARGUE SDWA DOES NOT PRECLUDE RULE |

Outlet Full Name: Inside EPA
News Text: Proponents of the Bureau of Land Management's (BLM) rule governing hydraulic fracturing on public lands are countering states' claims that Congress intended to address federal regulation of fracking via EPA's Safe Drinking Water Act (SDWA) authority, saying the congressional language of SDWA clearly intended to preserve BLM's authority.

"The question is whether Congress intended one regulation to preclude the other, and SDWA says its intent is not to preclude," Hannah Wiseman, an Attorneys' Title Professor at Florida State University College of Law, told lawmakers during a July 15 hearing of the House Natural Resources Committee's energy panel. Wiseman added that SDWA's statutory report language is clear in that it was not intended to preclude regulations implemented by U.S. Geological Survey (USGS) -- BLM's predecessor in governing public lands.

Moreover, Wiseman said in her testimony, "SDWA does not address comprehensive protection of public resources" as in the Federal Land Policy and Management Act (FLPMA) and the Mineral Leasing Act (MLA), the statutory authorities under which BLM issued the rule.

Also during the hearing, Rep. Alan Lowenthal (D-CA), ranking member on the subcommittee, said BLM's authority to govern well stimulation on public lands, including fracking, "goes way back" to when USGS governed the practice, pointing out "those regulations were in place before SDWA was passed in 1974. "And the House report on SDWA says very clearly Congress does not intend to repeal or limit any authority USGS may have -- it's about as clearly cut as you can get," Lowenthal said.

BLM is facing multiple lawsuits over the rule, including litigation filed by Colorado, North Dakota, Utah, Wyoming, Independent Petroleum Association of America, Western Energy Alliance and two tribes, the Southern Utes and the Ute Tribe of Uintah and Ouray County.

In the industry litigation, the two energy groups claim in their suit filed earlier this

year in the U.S. District Court for the District of Wyoming that the rule is a "reaction to unsubstantiated concerns" and will slow development on public lands.

But Wyoming is making the fairly novel argument in its suit, filed in March also in the district court for Wyoming, that Congress created SDWA's underground injection control (UIC) permitting regime, which governs a variety of industry activities including waste disposal, uranium mining, carbon capture and sequestration and others, to exclusively address underground injections. "The UIC program commits exclusive authority to regulate underground injections to the states and the U.S. Environmental Protection Agency," the suit argues.

The suit, State of Wyoming v. United States Department of Interior, et al. claims that the rule exceeds BLM's statutory jurisdiction, conflicts with SDWA and unlawfully interferes with Wyoming's fracking regulations. Wyoming says Congress made it clear that FLPMA does not affect other laws governing use of water on public lands, and cannot be used to modify or supersede existing federal laws for developing water resources.

Wyoming's novel argument appears to suggest that EPA should have sole authority under SDWA for regulating fracking. However, Congress subsequently in a 2005 energy law barred EPA from regulating fracking injections, except where diesel fuel is used, under the UIC program, amending SDWA to exclude fracking from the definition of "underground injection."

But Wiseman says in her prepared testimony that in providing the 2005 exemption for SDWA and a number of other statutory exemptions limiting EPA's authority on fracking, "Congress has not indicated an intent to preclude regulation by different agencies under different statutes." Moreover, Wiseman says that environmental laws are often structured to include "discrete exemptions" because lawmakers know that activity is already regulated under a different statute. Wiseman also says that the purpose of the environmental statutes is to limit the environmental "externalities" of private entities and local government activities, not "to limit a "federal agency's authority to manage federally-owned and federally-managed land in a manner consistent with its statutory mandate."

BLM's rule would update nearly 30-year-old existing standards for regulating fracking on public lands, setting requirements for disclosure of chemicals used in fracking, and relying on the state-run database FracFocus as a vehicle for chemical disclosure. The rule, which BLM first proposed in May 2012 and then later revised in a supplemental proposal, also sets requirements to ensure integrity for how fracking wells are constructed and for drilling wastewater storage.

But the federal district court in Wyoming in State of Wyoming issued a temporary stay of the rule, blocking its implementation and agreeing with state and industry plaintiffs suing over the rule that the regulation should not move forward until the court assesses its legality.

Judge Scott W. Skavdahl of the U.S. District Court for the District of Wyoming announced at the end of a June 23 hearing in the case that the court is staying the rule - originally scheduled to go into effect June 24 -- until early August. Skavdahl ordered the government to submit the rule's administrative record to the court by July 22 with the intention of issuing a ruling within a few weeks thereafter, but the judge has since granted an extension to BLM until Aug. 28. -- Bridget DiCosmo

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News Headline: EPA EXPECTS FINAL ESPS TO SPEED GHG CUTS AS COAL TAKES A BIGGER HIT |

Outlet Full Name: Inside EPA
News Text: The Obama administration's landmark greenhouse gas (GHG) standards for the existing power fleet, unveiled Aug. 3, are expected to cut emissions by 32 percent from 2005 levels by 2030, a steeper decline than the 30 percent cut envisioned by the proposed version, due mostly to a larger decline in coal use and greater use of renewables.

Some of the change is due to steps the administration took in the final version of the rule. For example, the final plan includes "more uniform and less varied" state GHG reduction targets, in part due to a change in the goal calculation that applies a national emissions rate to similar types of power plants in different states, EPA Administrator Gina McCarthy said during an Aug. 2 press call before the rule's release.

"A plant in Ohio is now treated the same as a plant in New Mexico," she said. "Every state goal is now being looked at as basically how that uniform standard applies [to] their energy mix."

For the existing source performance standards (ESPS), the new target-setting formula is likely to require greater cuts in coal-heavy states, given that a uniform emissions standard would be applied to states with many high-emitting coal plants, and also to states with few coal units. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183665)

McCarthy said the agency received comments that it is customary in a Clean Air Act rule to create the same standard for similar units. "We found many of those comments were compelling," she said.

Even though the new formula will change many states' goals, McCarthy said, "all of these standards remain reasonable and achievable. While those numbers may change, they're all entirely doable and it's affordable and it will not threaten reliability."

Overall, EPA projects coal to take a greater hit under the final rule than under the proposal. It now projects coal to be 27 percent of the country's energy mix in 2030, compared to an equivalent figure of 30 percent under the proposal.

The administration says the final rule will drive a "more aggressive transition to zero-carbon resources," projecting that the share of renewables in 2030 will be 28 percent, compared to 22 percent under the proposal.

The earlier version "relied on a large, early shift of coal generation to natural gas," the administration says. Instead, that "rush to gas is eliminated" in the final rule. Officials project the share of gas generation to be roughly flat compared to a business-as-usual case.

But the changes are drawing heated criticisms from the administration's most ardent coal critics. "EPA's final Clean Power Plan reflects political expediency, not reality for supplying the nation with low cost reliable power," the National Mining Association said. "Left in place are targets for replacing affordable energy with costly energy. These will burden Americans with increasingly high-costs for an essential service and a less reliable electric grid for delivering it. "

President Obama unveiled the suite of power plant GHG rules Aug. 3. In addition to the final ESPS, those include a proposed federal implementation plan (FIP) for those states that decline to develop their own plans for complying with the ESPS, and a companion new source performance standards (NSPS) rule for new power plants.

The coal sector also took a hit in the NSPS, which is a legal prerequisite that must be in place before EPA can implement an ESPS. Contrary to early reports, the administration has decided to retain a standard that requires new coal-fired units to install carbon capture and sequestration (CCS) technology, though the standard would require a lower level of carbon dioxide (CO2) capture than the proposed version.

"We think that remains reasonable as well as available for new coal units moving forward," McCarthy said, adding that plants would need a "simple CCS unit" to meet the new emissions standard.

But industry is warning that the inclusion of CCS, an emerging technology, is a legal weakness for the climate package, given the Clean Air Act mandate that any requirement be based on "adequately demonstrated" technology.

In a release, Bracewell & Giuliani attorney Scott Segal, who represents a group of coal-fired generators, says the move would undermine the NSPS "largely because CCS systems are not currently used in a sufficiently viable format to justify a regulatory standard."

While the industry has seen "interesting and important innovation" at plants such as

Southern Company's Kemper plant, he says that is not sufficient for an EPA standard. "Also, if the Agency produces a legally suspect rule for new power plants, then it cannot sustain the Clean Power Plan generally," he says.

Although she did not discuss specific legal arguments, McCarthy reiterated her long-standing claim that the rule is legally sound. The final version explains "legally how the changes were made and how this remains within the four corners of the Clean Air Act. It remains a very strong rule."

Obama has sought to make the rule part of his broader legacy in addressing climate change. In a video posted early Aug. 2, he called the final ESPS "the biggest, most important step we've ever taken to combat climate change."

McCarthy said the final rule will include total compliance costs of $8.4 billion in 2030, compared with total health and climate benefits of between $34 billion and $54 billion. The net benefits, she said, are between $26 billion and $45 billion. Overall, the rule would result in 870 million fewer tons of CO2 emissions in 2030 than business as usual.

McCarthy compared such annual compliance costs to the roughly $100 billion per year that utilities already spend on infrastructure upgrades. She added that the rule sends "a long-term investment direction signal that I think the energy world will be able to take cognizance of."

Lawsuits from states and industry are expected to be filed promptly after the rules appear in the Federal Register, a step that McCarthy said would "follow a standard process," contrary to rumors that the administration would delay publication until after this December's United Nations climate talks.

Even before officials briefed reporters publicly, several other changes to the final rule package had leaked. For example, officials decided to extend by two years the deadline for states to submit their final ESPS compliance plans to 2018, as well as the start of the rule's "interim" compliance period to 2022.

Those changes were intended to ease concerns that the proposed deadlines were unachievable and, in the case of the interim compliance period, would have resulted in steep emissions cuts that would threaten reliability. To further address reliability concerns, the final rule will also include multiple interim compliance periods.

McCarthy said states will be required to address reliability in their state plans, and EPA agreed with industry calls to include a reliability "safety valve" for plants that must run more than anticipated to protect reliable electric service.

"This is an opportunity to deal with a situation that, frankly, we don't see happening," she said. "But it's an opportunity for us to have an insurance policy against any situation that would threaten the energy system." She added that the tool is "narrowly

crafted," and that "we really don't expect the reliability safety value to actually be used."

Further, the final rule includes a change that will please three Southeastern states -- Georgia, South Carolina and Tennessee -- which have under-construction nuclear plants. It will remove such plants from the target-setting formula, but allow their generation to be used as compliance. It will also credit uprates of existing plants as new carbon-free power that can be used to comply.

Such changes appear to have won support from investor-owned utilities. "EPA seems to have responded to some of our key concerns," the Edison Electric Institute said in a statement. "

While we are still reviewing and analyzing the rule's specifics and the impact of the restructured interim goals, the final guidelines appear to contain a range of tools to maintain reliability and better reflect how the interconnected power system operates," the group added.

The final rule also dropped proposed agency assumptions about states' ability to improve energy efficiency as part of the goal-setting formula. Officials said that decision was driven by concerns that the agency lacked authority to set targets based on reducing demand for power because they believed they only had authority to ensure cleaner power "supply.".

But officials also created a new program to encourage more renewable energy and energy efficiency in the early years of the program. The final rule offers federal "matching credits" to states that make early GHG cuts before the new 2022 start to the compliance window. Credits would be available for renewable power produced in 2020 and 2021, and double credits would be given for energy efficiency programs in low-income areas.

"These credits will be well utilized. We think will this will be fully subscribed," McCarthy said.

With "full utilization of the incentive program," the administration says in a fact sheet, the rule would cut power sector GHGs by 27 percent from 2005 levels by 2020, which is "consistent with the reductions achieved in the proposed rule." Cuts in 2025 would also be consistent with the proposal, the fact sheet says.

Hitting those targets will be critical, given that the ESPS will play a major role in Obama's pledge to reduce economy-wide emissions 26 to 28 percent by 2025. The proposed rule was seen as achieving roughly half of that commitment, which is part of this December's U.N. climate talks in Paris.

EPA is also seeking to encourage emission trading programs, specifically blessing the concept of "trading ready" states that craft their own compliance plans with a set

of "common elements" that would allow power plants to opt into a broader emissions trading market alongside plants located in other states with similar plans.

The agency also released a proposed FIP Aug. 3, which it describes as a "model rule," that would create a framework for states to opt into that broader market. The federal plan "sets a structure for all states to follow if they choose," she said, adding that states have "many different paths toward trading."

The proposed federal plan will be "cost-effective," McCarthy said, "and it lets [states'] power plants use interstate trading right away. But they don't have to use our plan. They can cut carbon pollution in any way that makes sense for them."

If states refuse to submit compliance plans -- and roughly six governors have already threatened to do so -- EPA has pledged to impose its FIP on those states to secure an equivalent level of GHG cuts.

Importantly, McCarthy said the final ESPS, which sets default rate-based targets for each state, will also include mass-based standards, an approach that trading proponents have said is crucial as goals that measure only tons of CO2 would more easily accommodate trading. -- Lee Logan

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News Headline: D.C. CIRCUIT URGED TO IMPOSE EMERGENCY SUSPENSION OF EPA UTILITY MACT |

Outlet Full Name: Inside EPA
News Text: A Western electric utility is urging the U.S. Court of Appeals for the District of Columbia Circuit to impose an emergency suspension of an acid gas emissions limit in EPA's remanded utility air toxics rule, citing lingering doubts over the fate of the rule following a Supreme Court ruling faulting EPA's initial justification for the rule.

In a July 31 emergency motion, Tri-State Generation and Transmission Association asks the D.C. Circuit to issue an order before Sept. 1 suspending an obligation for the company's Nucla Station power plant in Colorado from having to meet the rule's hydrogen chloride (HCl) emissions limit. The suspension should stay in place until EPA issues a new finding on whether the overall rule is "appropriate and necessary," according to the filing. The motion is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183624)

The Nucla Station plant, like approximately 165 others, has a one-year extension for compliance with the maximum achievable control technology (MACT) rule and therefore would otherwise have to comply by April 16, 2016. Under the terms of the extension, the company must currently decide by Sept. 1 whether to shut down the

plant or "spend millions" to meet the HCl pollution limit. As such an investment might not be cost-effective, the company wants to await the outcome of litigation over the rule.

In a 5-4 ruling issued June 29, the Supreme Court in Michigan v. EPA agreed with industry, some states and others critical of the MACT rule that the agency should have considered costs in its its initial finding that it was appropriate and necessary to issue a MACT (Inside EPA, July 3).

EPA said the Clean Air Act was silent on the issue and therefore it did not have to consider costs for the finding, and instead assessed costs at a later stage when it crafted the actual emissions limits in the final air toxics rule, which is also known as the agency's mercury and air toxics standards (MATS).

But the majority of justices disagreed and said costs should have been considered upfront, remanding the rule and litigation over it to the D.C. Circuit. The appellate court in a 2-1 ruling issued in April 2014 in White Stallion Energy Center LLC, et al., v. EPA, et al. had upheld the rule, but the justices' decision means that the court will now have to reconsider that decision in light of the high court saying that EPA should have factored costs into its finding.

Tri-State now argues that the remand means the D.C. Circuit should act before Sept. 1 to freeze the company's HCl emissions limit compliance obligation for the Nucla Station "unless and until EPA makes a new 'appropriate and necessary' finding in light of Michigan. Specifically, Tri-State requests that, if the MATS Rule is remanded without vacatur and EPA makes such a finding, the Nucla Station compliance obligation for HCl be tolled for at least the number of days between the Supreme Court's decision in Michigan and the effective date of the new finding."

Failing to grant the suspension by Sept. 1 -- the deadline set under the Nucla Station plant's one-year extension agreement for a decision on whether to shut down or install controls -- would "make a mockery" of the Supreme Court's ruling Tri-State argues, because it could force the company to make unnecessary major pollution control investments.

Installing controls will disproportionately hurt low-income customers of the plant who will bear the cost of the controls through higher electricity prices, the company says. Closing the plant will hurt the town of Nucla, where the plant is a major employer and taxpayer, Tri-State says. -- Stuart Parker

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News Headline: EPA USES UNIFORM STANDARDS TO PRESERVE OVERALL STRINGENCY IN FINAL ESPS |

Outlet Full Name: Inside EPA
News Text: EPA officials say they were able to strengthen their just-finalized greenhouse gas (GHG) rule for existing power plants despite dropping energy-efficiency measures from setting state goals due to more robust assumptions about the potential for renewable energy, as well as a more regional approach to coal-to-gas shifting.

The regional target-setting approach is a major change to how EPA calculates states' GHG goals in the existing source performance standards (ESPS). Under the new approach, EPA created uniform emission performance rates for coal- and gas-fired plants and applied those rates to each state's generation mix to create the state's GHG reduction target.

Under the final rule, EPA uses an interim emission performance rate for coal plants of 1,534 pounds of carbon dioxide per megawatt hour (lbs CO2/MWh), with a final rate of 1,305 lbs CO2/MWh.

For gas plants, the interim standard is 832 lbs CO2/MWh, and the final standard is 771 lbs CO2/MWh.

EPA crafted those rates by applying three building blocks, or GHG reduction strategies, to regional generation levels. The strategies include: improved plant-level efficiency, displacing coal generation with gas generation and greater reliance on renewables and zero-emitting resources. Unlike the proposed rule, the final formula does not include assumptions about end-use energy efficiency when setting targets.

After creating three regional rates -- one for the Western Interconnection, the Eastern Interconnection and the Texas power grid -- EPA picked the least stringent rate for each class of plants to use nationally.

In the final ESPS, the performance rates were calculated by applying the building block strategies to a generation in a broad grid region, unlike the proposal's approach that applied the building blocks at a state level.

The uniform national performance standards create the upper and lower limit for all states' targets. For example, a state that has no existing gas plants, such as West Virginia, has a final rate-based target of 1,305 lbs CO2/MWh, which is the national coal rate.

A state like California, with no coal plants, has a final rate-based target of 771 lbs CO2/MWh, the national gas rate.

States would then fall in between those two rates based on a weighed average of their historical coal and gas generation.

Employing the new target-setting approach leads to "more uniform and less varied"

state targets, EPA Administrator Gina McCarthy said during an Aug. 2 press call previewing the final ESPS. "The goals are much closer together than at proposal," EPA says in state-specific fact sheets. "Compared to proposal, the highest (least stringent) goals got tighter, and the lowest (most stringent) goals got looser."

Acting EPA air chief Janet McCabe told an Aug. 3 press call that the change also "means there's more opportunities to shift to cleaner natural gas and renewable energy, broadly, across the sector."

Underscoring the additional "opportunities," coal-heavy states that previously had softer targets tied to the gas-related building block 2 -- because they had few or no existing gas plants -- now have relatively stricter targets because the goals reflect the regional coal-to-gas shift.

McCabe added that EPA boosted its assumptions about new renewable energy potential based on information from the National Renewable Energy Laboratory and other sources, which suggested that the costs of renewable technology is decreasing, and that the "pace of construction of these activities is going up."

She added that the data EPA used for its renewable targets "do not rely on the continuation of the [federal wind] tax credit."

The regional target-setting approach and the boosted assumptions about renewables, she said, "makes up for the fact that some other things have been taken out of the target setting."

EPA adopted the new approaches for setting state targets as it also decided to drop building block 4, which assumed states could boost end-use efficiency measures. One consultant earlier said that block 4 was responsible for about 15 percent of the total cuts from the program, a "fairly significant" amount.

The change "has tremendous implications for how they calculate the state goals, and if they want to maintain the same level of stringency then what that means is the other blocks need to become much more ambitious, the source said, prior to the rule's release.

But many critics charged that the efficiency block was legally vulnerable because it fell far beyond an individual units' "fence line," where the agency has generally set emission standards.

In another move that weakened the proposed goals for some states, EPA removed under-construction nuclear plants from the targets in Georgia, South Carolina and Tennessee. Those states are building large nuclear plants that will now be able to be used for compliance. -- Lee Logan

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News Headline: Green tech. companies to take center stage in Queen City |

Outlet Full Name: New Hampshire Union Leader Online
News Text: MANCHESTER — Renewable energy and green technology companies in New Hampshire will showcase their work at a special edition...

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News Headline: Coal Industry Wobbles as Market Forces Slug Away |

Outlet Full Name: New York Times Online
News Text: ...Obama slammed the industry with tougher-than-expected rules from the Environmental Protection Agency limiting power plant...

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News Headline: The Markets Dig a Grave for Big Coal |

Outlet Full Name: New York Times, The
News Text: In April 2005, President George W. Bush hailed "clean coal" as a key to "greater energy independence," pledging $2 billion in research funds that promised a new golden age for America's most abundant energy resource.

But a decade later, the United States coal industry is reeling as never before in its history, the victim of new environmental regulations, intensifying attacks by activists, collapsing coal prices, and -- above all -- the rise of cheap alternative fuels, especially natural gas.

This week President Obama slammed the industry with tougher-than-expected rules from the Environmental Protection Agency limiting power plant carbon emissions, which will accelerate an already huge shift from coal to natural gas and other alternatives.

"Clean coal" remains an expensive and thus far impractical pipe dream. Coal is the world's biggest source of carbon emissions by far and the leading culprit in global warming. Coal advocates like Mitch McConnell, the Kentucky senator and Republican majority leader, have accused the president of an out-and-out "war on coal."

But it's collapsing prices and heavy debt loads that are driving the industry into bankruptcy. Alpha Natural Resources, the nation's fourth-largest coal producer after it doubled down on coal two years ago in acquiring Massey Coal for $7.1 billion, filed for bankruptcy protection on Monday. It follows Walter Energy, which filed

last month; Patriot Coal, which sought court protection in May; and numerous smaller mining companies.

The demise of the two biggest surviving publicly traded coal companies -- Peabody Energy and Arch Coal, the nation's two largest producers -- may just be a matter of time, based on their recent stock performance. Peabody shares, which traded at more than $16 less than a year ago, hit 99 cents this week, and Arch shares have fallen to $1 from more than $33, making them among the biggest losers this year in the Standard & Poor's 500-stock index.

"This has been a storm gathering for a very long time," said Jeff Goodell, author of the 2006 book "Big Coal: The Dirty Secret Behind America's Energy Future." "When I wrote my book, coal looked indomitable. But below the surface you could see all these issues coming at them. You can only hold off the larger forces of progress and science for so long. The bottom line is that it's a 19th-century fuel very badly suited for the 21st century. There's no way you can wash or scrub coal to make that essential fact go away."

Market forces have accomplished in just a few years what environmentalists and social advocates have struggled for decades to achieve. Coal prices have plunged about 70 percent in the last four years. This year the number of underground and surface coal miners in the United States dropped more than 10 percent, to just over 80,000 workers. There are now more than twice as many workers in the fast-growing solar power industry than there are coal miners.

Mountaintop removal, the poster child for environmental destruction, has all but ground to a halt as coal companies continue to close mines, lay off workers and slash capital spending on expensive new mining operations. Meantime, natural gas production has soared and electric utilities have built up gas-fired generation to replace aging coal-fired power plants.

"It's kind of the ultimate irony that market forces, and not the administration or environmentalists, have displaced coal," said Jorge Beristain, head of Americas metals and mining equity research for Deutsche Bank. "It's human ingenuity that found a cheaper, cleaner way to skin the cat, which is by producing natural gas from fracking. They're both fossil fuels, of course, but burning natural gas puts out a lot less carbon than coal."

Burning coal produces nearly twice as much carbon dioxide as does natural gas, according to the United States Energy Information Administration.

Anthony Young, a mining analyst at the Macquarie Group, agreed. "There have been a lot of protests and animosity towards the coal industry, but lo and behold, it was the natural gas industry that has stopped many of the worst mining practices," he said. "There are concerns about fracking, but it's way better than cutting down mountains."

Environmentalists are starting to notice that financial arguments may prove more effective than moral or social ones at persuading major investors to shun coal. Stanford University, which announced last May that it would divest itself of direct investments in coal producers, looks at least as much like a shrewd investor as an environmental steward, given the subsequent plunge in coal prices and coal company stock prices, and other big investors have taken notice.

In June, Norway's government pension fund -- considered the world's largest sovereign wealth fund with $890 billion in assets, much of it generated from oil revenue -- said it would divest itself of coal holdings. A spokeswoman for the fund said this was a financial decision, not a political one, with the goal of "building financial wealth for future generations."

"I think you're seeing a generational shift where the activists are getting more market-savvy," said Mr. Beristain of Deutsche Bank. "They're targeting Wall Street and the analysts. It's becoming part of the environmental agenda to kneecap the coal sector at the source of its cash."

Carbon Tracker, a London-based think tank, is among those trying to use financial data to affect climate change. "We try to stay out of the political discussion," said Luke Sussams, a senior researcher and co-author of "The US Coal Crash," a report arguing that coal faces a long-term, and not just cyclical, decline. "We look at it purely from a risk versus return perspective," he said. "Our stance is: It's a bad investment."

Environmentalists still have their work cut out for them. The coal industry may be in dire straits, but it's not going to vanish overnight. In 2013 the United States produced 985 million tons of coal, although it was the first time in 20 years that production fell below one billion tons. The United States consumed 924 million tons, 93 percent of it accounted for by the electric power industry, according to government statistics. In 2011, the United States consumed 1.1 billion tons.

"It's premature to say the industry is dead," said Mr. Young, the Macquarie analyst. He estimated the industry needs to shrink by about 25 percent to meet current demand, and more if electric utilities accelerate the shift to natural gas. But as coal companies "go through bankruptcy, their assets aren't going to shut down. Mismanagement will be addressed, and their balance sheets will be restructured, but viable assets will re-emerge and be profitable."

But it seems safe to say that the coal industry will never wield the enormous economic and political clout that it had even 10 years ago. "In the aftermath of the Bush-Cheney administration, there was this resurgence of the idea that coal was the American rock," Mr. Goodell said. "America's industrial strength was built on burning coal. No politician wanted to mess with coal."

But with the shrinking of the industry, coal interests "are losing their clout, and

they're not going to get it back," Mr. Goodell said. "It's becoming clear where the future is going. The politically smart thing is to jump on the renewables bandwagon."

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Outlet Full Name: Republican Online
News Text: ... FERC is currently determining the scope of issues to include in its Environmental Impact Statement (EIS) on the 412-mile...

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News Headline: The Religion of Climate Change |

Outlet Full Name: Wall Street Journal Online
News Text: ...Borgia/Associated PressPope Francis at a conference on modern slavery and climate change at the Vatican, July 21. When President...

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News Headline: Mine plug blows in Colorado, dumping 1M gallons of waste |

Outlet Full Name: Advocate Online, The
News Text: ...Colorado on Thursday was caused by a federal mine cleanup crew.The U.S. Environmental Protection Agency said that a cleanup...

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News Headline: Sludge from Colorado mine spill heads down river to NM |

Outlet Full Name: Associated Press (AP)
News Text: DENVER (AP) - A plume of orange-ish muck from million-gallon mine waste spill in Colorado was headed down river to New Mexico, prompting communities along the water route to take precautions until the sludge passes.

Officials emphasized that there was no threat to drinking water from the spill. But downstream water agencies were warned to avoid Animas River water until the plume passes, said David Ostrander, director of the EPA's emergency response program in Denver.

The U.S. Environmental Protection Agency said that a cleanup team was working

with heavy equipment Wednesday to secure an entrance to the Gold King Mine in southwest Colorado. Workers instead released an estimated 1 million gallons of mine waste into Cement Creek.

"The project was intended to pump and treat the water and reduce metals pollution flowing out of the mine," agency spokesman Rich Mylott said in a statement.

The creek runs into the Animas, which then flows into the San Juan River in New Mexico and joins the Colorado River in Utah.

Officials weren't sure how long it would take the plume to dissipate, Ostrander said. The acidic sludge is made of heavy metal and soil, which could irritate the skin, he said.

The EPA was testing the plume to see which metals were released. Previous contamination from the mine sent iron, aluminum, cadmium, zinc and copper into the water, said Peter Butler, co-coordinator of the Animas River Stakeholders Group.

Earlier Thursday, the EPA said in a statement that the polluted water "was held behind unconsolidated debris near an abandoned mine portal."

As the plume headed toward New Mexico, that state's governor said the EPA waited too long to tell her about the problem.

Gov. Susana Martinez is disturbed by the lack of information provided by the agency to New Mexico's environmental agencies, said Chris Sanchez, a spokesman for the governor. Sanchez said that the state was not told of the spill until almost a full day after it happened.

The plume made its way to Durango on Thursday afternoon, prompting La Plata County health officials to warn rafters and others to avoid the water. The scenic waterway was the backdrop for parts of the movie "Butch Cassidy and the Sundance Kid" and is popular with summer boaters.

Durango stopped pumping water out of the Animas River on Wednesday to make sure none of the waste could be sucked up into the city reservoir. It also suspended the transfers of raw water to a local golf course and Fort Lewis College. Pet owners were advised to keep dogs and livestock out of the Animas.

"It's really, really ugly," Butch Knowlton, La Plata County's director of emergency preparedness, told The Durango Herald. "Any kind of recreational activity on the river needs to be suspended."

In Farmington, New Mexico, city officials shut down water-supply intake pumps to avoid contamination and advised citizens to stay out of the river until the discoloration has passed. Don Cooper, emergency manager in San Juan County, said

people should not panic because the EPA had told the county the spill would not harm people and that the primary pollutants were iron and zinc.

"It's not going to look pretty, but it's not a killer," Cooper told The (Farmington) Daily Times.

The impact on wildlife wasn't clear. There are no fish in the Cement Creek watershed because of longstanding problems with water quality, the Colorado Department of Public Health and the Environment said.

Colorado Parks and Wildlife was placing cages containing fish in the Animas River to monitor what happens to them, spokesman Joe Lewandowski said.

"We'll see if those fish survive," Lewandowski said. "We're also monitoring to make sure we don't get infiltration into the hatchery, because that could be a problem."

The U.S. Fish & Wildlife office in suburban Denver did not immediately return a call asking about the spill.

Durango resident Lisa Shaefer said she was near the mine Wednesday when a mine bulwark broke and sent a torrent of water downstream that raised the water level 2 to 3 feet in Cement Creek. The initial wall of water carried rocks and debris and made a roar as it pushed through a culvert, she said.

"What came down was the filthiest yellow mustard water you've ever seen," she told the newspaper.

Information from: KIQX-FM, http://www.radiodurango.com

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News Headline: ADVISORS' DRAFT REVIEW URGES EPA TO RECONSIDER NOVEL SKIN CANCER RISK |

Outlet Full Name: Inside EPA
News Text: The first draft report from the panel of science advisors peer reviewing EPA's draft assessment of the human health risks of the petroleum chemical benzo(a)pyrene (BaP) generally concurs with many of the agency's conclusions about the hazards the chemical poses, but is critical of most of the risk estimates EPA has calculated, particularly a novel skin cancer risk estimate.

The panel's draft report agrees with EPA's September 2014 draft Integrated Risk Information System (IRIS) assessment of BaP that the chemical is a developmental

neurotoxicant, a reproductive toxicant, presents hazards to the human immune system and concurs with EPA's proposed classification of BaP as a human carcinogen. The panel also concurs with two conclusions that tighten EPA's cancer risk estimates: that BaP causes cancer through a mutagenic mode of action, or biological pathway, and as a result, that EPA should use an additional safety factor intended to protect children from mutagenic agents in its BaP cancer risk calculations.

But the draft review report criticizes EPA's approaches for calculating its first-time skin cancer risk estimate and its non-cancer inhalation and oral risk estimates, while questioning EPA's justification for its approach to its oral cancer potency estimate. The Chemical Assessment Advisory Committee (CAAC) panel, a subgroup of EPA's Science Advisory Board (SAB) that is reviewing the draft BaP assessment, recently released a draft report dated July 24, in advance of a CAAC conference call scheduled for Aug. 21 to discuss the draft review. The draft report is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183659)

The draft report is important for several reasons, including the first-time attempt to calculate a skin cancer risk estimate, but also the fact that EPA's effort at re-assessing BaP's risk comes at the recommendation of a 2010 SAB panel that peer-reviewed an agency effort at crafting a relative potency factor approach for estimating the toxicity of mixtures of polycyclic aromatic hydrocarbons, with the intent of using BaP as a reference chemical. That SAB panel pressed EPA to update its 1994 IRIS assessment of BaP before using it as a reference chemical in such an approach.

The draft assessment is also one of the first three being peer-reviewed by the relatively new CAAC, one of EPA's efforts to strengthen the IRIS program following a critical review from the National Academy of Sciences in 2011.

"The SAB commends the agency's efforts in deriving the IRIS Program's first dermal slope factor (DSF)," the peer review panel's draft report states. "However, the proposed DSF is not sufficiently supported scientifically."

The draft report goes on to encourage EPA to use additional studies to bolster its analysis, specifically pointing to two additional toxicology studies of mice whose skin was treated with BaP to "consider combining results from the mouse skin tumor bioassays to strengthen the derived DSF. The SAB also recommends that the EPA more thoroughly review the evidence of skin cancer in studies of coke, steel and iron, coal gasification and aluminum workers given their relevance for evaluating the appropriateness of using the mouse-based risk assessment model for predicting skin cancer risk in humans."

Epidemiologists on the CAAC panel raised concerns at the panel's meeting last April that EPA had not made sufficient use of studies of workers exposed to BaP on the job, particularly in the dermal and inhalation cancer potency estimates. They proposed that EPA consider epidemiology studies to bolster these risk estimates.

The draft report also criticizes EPA's approach to the literature search for the BaP assessment, arguing that it is too restrictive and as a result, omits some of epidemiology studies that the panel is encouraging EPA to reference.

Technical staff in EPA's National Center for Environmental Assessment, which manages the IRIS program, developed the first-time skin cancer risk estimate after discussions with EPA's Superfund and other offices, an IRIS official told reporters in April. The chemical frequently occurs at Superfund and other waste sites.

Samantha Jones, associate director for science in EPA's IRIS program, explained after the April CAAC meeting that the large amount of data available on BaP made it possible to try the first-time effort, although she acknowledged it "is a complex issue that is difficult to solve, and there is no scientific consensus on how to do it."

This lack of consensus appeared during the CAAC panel's April meeting, as various panel members debated technical issues with the proposed skin cancer risk estimate such as the best dose metric and how to scale from lab mice to people. The draft report reflects some of these concerns.

For example, it does not reach a conclusion on how EPA should calculate its dermal dose metric, in mass of BaP or mass per skin area -- both metrics are used in published studies. Instead, the draft report "strongly recommends that in the absence of empirical data, the decision be based upon a clearly articulated, logical, scientific structure that includes what is known about the dermal absorption of BaP under both conditions of the [mouse] bioassays and anticipated human exposures, as well as the mechanism of skin carcinogenesis of BaP."

The report does, however, provide a clear recommendation that EPA should "calculate the [skin] cancer risk from the absorbed dose, and state clearly how the absorbed dose is estimated from the exposed dose."

Industry has protested EPA's effort to calculate a dermal risk, arguing the agency should first develop guidelines for performing skin risk estimates before calculating such an estimate in an assessment. But EPA's Jones in April said guidance documents are informed by experience and IRIS staff are trying to balance efforts to move the state of the science forward while making progress on IRIS assessments.

Industry representatives have also argued that EPA's draft assessment is overly strict and would predict more than a quarter of cases of skin cancer in the United States were caused by BaP, rather than ultraviolet light, which is expected to cause most skin cancers.

But at the April meeting some CAAC panelists suggested industry's calculation is off because most cases of skin cancer are unreported to the cancer registry, and therefore only about 5 percent of cancers would be linked to BaP instead of 26 to 30 percent as

industry claims (Inside EPA, April 24).

The draft report is particularly critical of the proposed reference concentration (RfC), the risk estimate calculated to protect against non-cancer effects from inhalation exposure to BaP. The draft calls the RfC "not currently scientifically supportable" due to concerns with EPA's choice of a single, problematic study as the basis for the calculation, as well as some decisions with uncertainty factors with which the advisors disagree. The draft report recommends that EPA consider two additional studies, which it says "may be useful in developing a more comprehensive dose-response relationship for BaP and, thus, perhaps increasing confidence . . ."

The draft report also criticizes EPA's proposed RfD, which is analogous to the RfC but for ingestion. The CAAC panel questions the basis for EPA's calculations, suggesting that a different effect might be more sensitive and a better endpoint on which to base the calculations. -- Maria Hegstad

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News Headline: UNCERTAINTY INCREASES OVER TIMING OF SENATE FLOOR VOTE ON TSCA REFORM |

Outlet Full Name: Inside EPA
News Text: Uncertainty is increasing over when bipartisan Senate Toxic Substances Control Act (TSCA) reform legislation will receive a floor vote given expectations that senators will prioritize other issues after Congress' August recess, including cybersecurity and spending bills and a GOP bid to end funding for Planned Parenthood, sources say.

Supporters of the bill, S. 697, previously urged Senate Majority Leader Mitch McConnell (R-KY) to bring the bill to the floor before the Senate begins its August in-state work period on Aug. 10, which continues through Labor Day on Sept. 7. But a vote will not happen this month and the Senate's legislative work is not slated to resume until Sept. 14, creating doubts about whether the TSCA bill, S. 697, will make it to the floor before mid to late fall.

Sen. Mike Rounds (R-SD) told Inside EPA in a brief Aug. 4 interview that the TSCA reform measure did not make the list of top priorities before the recess, with cybersecurity and appropriations discussions taking precedence. "Floor time is valuable," said Rounds, one of the bill's 52 Republican and Democratic sponsors.

"McConnell will slide it in as soon as there's a lull," one industry source says of the bill, but adds that a "pure guess" is that it is unlikely to happen until October. Budget debate will likely "eat up September" in the Senate given that a continuing resolution funding the government is set to expire on Sept. 30, the source adds.

The source also says that Republican-led efforts to end federal funding for Planned Parenthood have "taken up a lot of floor time" and that the budget process will likely take up the remainder of available time.

Rounds told Inside EPA that it is "pretty obvious" that senators will not have time to consider S. 697 on the floor this week. "So where are we going with the rest of that? It'll be up to the leader to decide."

A second industry source believes a vote could occur anywhere from early

September to November, yet cautions the the longer the delay in a vote, the worse the prospects for the bill moving. "I think it will happen, but believe the longer it takes, the more uncomfortable I am in believing final TSCA legislation will happen."

If a Senate vote takes place and the legislation clear the upper chamber, attention would then shift to work on a conference committee designed to reconcile differences between S. 697 and a narrower House TSCA reform bill, H. R. 2576, which cleared the lower chamber in a 398-1 vote in late June. "A lot of discussions are already going on to try to limit the issues" for the conference panel, the first industry source says.

Sen. Tom Udall (D-NM), who introduced S. 697 along with Republican Sen. David Vitter (R-LA), suggested at a June 25 Bipartisan Policy Center (BPC) TSCA reform discussion in Washington, D.C., that lawmakers have several options to resolve differences between the bills, including an informal conference (Inside EPA, July 3).

Such a process, in which lawmakers held informal talks ahead of a formal conference and "outlined the differences" in each bill, could mean that the formal conference would go quickly and smoothly, Udall said.

Rep. John Shimkus (R-IL), who authored the House TSCA bill, told the same BPC discussion that "I'm waiting for the Senate to get a bill passed," noting that the Senate bill S. 697 could be subject to floor amendments.

But Shimkus also said that the two chambers have held "staff to staff meetings" to discuss the bills and options, including "informal conference, negotiating on the same bill, formal conference."

Both the House and Senate bills would overhaul the 1976 TSCA in order to give EPA new authority to address risks from existing chemicals in the marketplace, and eliminate legal hurdles in current law that have hindered the agency's ability to restrict dangerous chemicals, such as its 1991 failure to ban asbestos.

The House bill has narrower preemption of state toxics programs than S. 697. It would "grandfather," or preserve existing state chemical safety laws that have taken effect before Aug. 1 and preserve state toxic tort claims, after EPA takes final action on a chemical, unless they "actually conflict" with new federal mandates. New state chemical laws, however, would be preempted once EPA finishes a restriction under TSCA.

The Senate bill now has 52 total sponsors, just eight declared votes short of the 60 votes proponents would need to overcome a filibuster attempt to block the bill by its critics, including Sen. Barbara Boxer (D-CA).

Boxer, ranking member on the Senate Environment & Public Works Committee, opposes the legislation for several reasons including its sweeping preemption of state

chemicals programs. She has urged senators to instead consider the House-approved TSCA bill for floor consideration instead of voting on S. 697.

The Senate bill currently has support from 29 Republicans and 23 Democrats, including lead authors Sens. Udall and David Vitter (R-LA). The most recent co-sponsors include Sens. Jack Reed (D-RI), Pat Roberts (R-KS), Al Franken (D-MN), Lindsey Graham (R-SC), and Roger Wicker (R-MS), who signed on July 9, and on July 16 Sens. Richard Burr (R-NC), Tammy Baldwin (D-WI) and Thom Tillis (R-NC), announced their support for the bill.

Vitter and Udall have indicated that while they will allow some amendments when the bill goes to a floor vote, they oppose major changes that could cost the bill its broad bipartisan support.

If a floor vote takes place in the coming weeks on the bill, Boxer is expected to offer amendments designed to strike language to which she objects, such as the preemption of state programs.

Separately, a staffer for Sen. Ed Markey (D-MA) recently outlined potential changes for the bill -- including increasing industry funding for EPA assessments and speeding agency reviews of certain chemicals -- that, if adopted, could lead Markey to support the measure and boost its prospects to overcome a filibuster (Inside EPA, July 31).

Markey and Boxer were among the five senators, four Democrats and an independent, who voted against compromise version of S. 697 when EPA approved the bill April 28 in a 15-5 vote. If Markey were to back the bill it would bring its proponents closer to a filibuster-proof level of support. -- Bridget DiCosmo & David LaRoss

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News Headline: EPA ADDRESSES NICOTINE QUESTIONS AHEAD OF WASTE PHARMACEUTICALS RULE |

Outlet Full Name: Inside EPA
News Text: Ahead of EPA's long-awaited waste pharmaceuticals rule, the agency has released correspondence signaling its views on when nicotine-containing products are considered hazardous waste, an issue of concern for the pharmaceutical and retail industries.

EPA in the correspondence maintains that electronic cigarettes (e-cigarettes) are in fact acute hazardous waste when disposed of, and cannot escape that designation as "manufactured articles." But the agency also says that nicotine products, including e-cigarettes, are not regulated as hazardous waste if legitimately recycled. The correspondence may provide some insight into how nicotine products will be treated under the upcoming proposed pharmaceutical rule, expected to be released in the coming weeks. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183603)

The White House Office of Management & Budget (OMB) has been reviewing the proposal since March 19. Regulatory review typically take 90 days but can take less or more time depending on the complexity of the rule or interagency concerns. EPA developed this proposal after abandoning an earlier 2008 draft that drew widespread criticism from industry and states. These critics said the plan to add pharmaceuticals to the Universal Waste Rule was unlikely to achieve EPA's goals of facilitating pharmaceutical take-back programs and reducing the improper flushing of pharmaceuticals into sewers.

The new proposal would revise RCRA Subtitle C hazardous waste regulations in order to improve the management and disposal of hazardous waste pharmaceuticals, responding to difficulties voiced by healthcare facilities to comply with "the manufacturing-oriented framework" of Subtitle C, according to the spring 2015 Unified Agenda. The rule also aims to clarify regulation of a frequently relied upon system used by healthcare facilities to manage unused and expired pharmaceuticals, known as reverse distribution, according to the agenda.

The agenda says the agency is considering regulations that would "provide a regulatory scheme that is adapted to the unique issues that hospitals, pharmacies and other health care-related facilities face."

EPA officials last fall noted that they were looking to the pending pharmaceutical rule, as well as a pending hazardous waste generator improvement rule and its definition of solid waste rule -- released earlier this year -- to address in part the retail industry's concerns about the application of RCRA hazardous waste management requirements to the retail sector (Inside EPA, Nov. 7).

Additionally, an agency spokeswoman says EPA is on target this year to release a strategy on how it plans to address challenges under RCRA raised by retailers. The industry's concerns included fear that EPA would disrupt the reverse distribution systems used to dispose of unsaleable or outdated pharmaceuticals.

A spokeswoman for the National Association of Chain Drug Stores (NACDS) says the group is anticipating release of the pharmaceutical rule and plans to review it, once released, "and go from there in terms of what's in the rule." NACDS is one of a coalition of retail organizations that last year submitted comments to EPA on a notice of data availability (NODA), which sought information from the retail sector on waste management practices and advice on how to address challenges in complying with RCRA hazardous waste policies.

In the comments on the NODA, the retail industry coalition highlights unsold/returned nicotine products as a priority area for which it would like EPA to develop a "targeted" solution. These unsold/returned products, along with aerosol cans, are of particular concern to the retail industry because it spends "significant resources managing them as acutely hazardous wastes or hazardous wastes, respectively." The coalition asked the agency to provide alternative but "equally protective" programs to address "all unsold/returned products in the retail sector."

In the comments, the coalition says while EPA has indicated it will address the issue of nicotine products in the pharmaceutical rule, it urged the agency not to wait until the rule is released before coming up with a solution on the nicotine issue.

Further, the coalition urges EPA to reclassify unsold nicotine-containing products, such as nicotine replacement therapy products and e-cigarettes, as not acutely hazardous. "[T]he current RCRA regulations inappropriately classify such products as acutely hazardous wastes, subject to a large quantity generator ("LQG") threshold of just 1 kilogram/month, and this is the sole reason why thousands of retail stores across the nation are subject to full regulation under RCRA," the coalition says. Reclassification would bring retail stores tens of millions of dollars in annual regulatory relief, it says, advocating for either a conditional exemption from RCRA regulation or being subject to substantially reduced requirements governing small quantity generators.

The coalition lists reasons for reclassifying, citing for instance erroneous human toxicity data and high-concentration nicotine products no longer in use that were relied on for the acutely hazardous classification.

But EPA in May correspondence with a law firm and a recycling company, released earlier this month on the agency's RCRA Online website, appears to take a middle approach. The letters from EPA Office of Resource Conservation & Recovery Director Barnes Johnson say e-cigarettes can be regulated as an acute hazardous waste when disposed but can avoid regulation if recycled.

In a May 8 letter to the Michigan law firm Warner, Norcross & Judd, EPA's Johnson says the agency has concluded that because e-cigarettes house cartridges "that are containers of a commercial chemical product, specifically nicotine, e-cigarettes therefore may be regulated as acute hazardous waste P075 when disposed." Nicotine, which comprises 1-2.5 percent of the liquid in e-cigarettes, is the sole active ingredient, and is a listed commercial chemical product and acute hazardous waste -- on EPA's P-listed acute hazardous wastes -- when disposed, EPA notes.

EPA also rejects the law firm's suggestion that e-cigarettes be classified as "manufactured articles" under RCRA regulations, and therefore not regulated as hazardous waste commercial chemical products.

The agency says items that it has previously designated as manufactured articles "-- batteries, fluorescent lamps and thermometers -- are all designed for a purpose other than to access the chemicals that are present in these manufactured articles," Johnson says. "Specifically, one uses these articles for electrical energy (batteries), light (lamps) or to measure temperature (thermometers)." But these are not used to access the mercury or lead or other chemicals contained in the articles, he says.

"In contrast, one uses an e-cigarette specifically to access the nicotine e-liquid," he says. "E-cigarettes are intended to achieve exactly that purpose -- i.e., to deliver or release the nicotine to the user. Therefore, EPA has concluded that e-cigarettes are not manufactured articles."

Further, the agency says there is no difference for classifying e-cigarettes as a commercial chemical product if the cartridges are pre-filled in the e-cigarette or come separately. "E-cigarette cartridges are considered containers of nicotine (RCRA waste code P075), regardless of the style or design of the e-cigarette and regardless of whether the cartridge is integral to or detachable from the e-cigarette," Johnson says.

Johnson, however, says briefly in this letter and more in depth in a separate May 8 letter to a recycling company that nicotine e-liquid is not deemed a solid waste, and therefore not subject to hazardous waste regulation, if "legitimately recycled."

In the letter to recycling company g2revolution, Johnson says nicotine gum, patches, lozenges and e-cigarettes are acute hazardous waste and may be subject to hazardous waste regulation when disposed, but can avoid regulation when legitimately recycled. The company sought answers on RCRA's applicability to its nicotine reclamation process.

"Whether the nicotine-containing gums, lozenges, patches and e-cigarettes are exempt from regulation as a solid and hazardous waste because they are commercial chemical products being reclaimed depends on whether the nicotine reclamation performed by your company is considered legitimate recycling," Johnson says.

He explains that the agency's Jan. 13 Definition of Solid Waste rule bars "sham" recycling of hazardous waste or hazardous secondary materials, and codifies the four factors that must be met for recycling to be deemed legitimate. These include that the recycling involve a hazardous secondary material that usefully contributes to the recycling process or a product or intermediate of the recycling process. Here, nicotine products must be the source of a valuable constituent -- nicotine -- recovered during recycling, he says.

Second, the recycling must produce a valuable product or intermediate, he says. Here, nicotine would be considered valuable if sold to a third party, he says.

Third, generators and recyclers must handle the hazardous secondary material as a valuable commodity. To meet this, the company must manage the nicotine-containing products in the same manner as management of the raw material -- nicotine, he says.

Last, the recycled product must be comparable to a legitimate product or intermediate, he says. "This factor refers to the presence of hazardous constituents other than the product itself," he says. One way to meet this would be to examine whether there are hazardous constituents besides nicotine in the recycled product and, if so, to ensure they are at levels equal to or lower than those in nicotine not made from secondary materials, he says. Or, the company could meet widely-recognized specifications that address hazardous constituents in such products. -- Suzanne Yohannan

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News Headline: SAB URGES MORE STATE, UTILITY INVOLVEMENT IN EPA DRINKING WATER LIST |

Outlet Full Name: Inside EPA
News Text: EPA's Science Advisory Board (SAB) is urging EPA to gather data from a wider variety of sources when evaluating which contaminants should be considered for regulation under the Safe Drinking Water Act (SDWA), raising concerns in a new draft report that the agency relies too heavily on the public to submit new contaminant recommendations.

SDWA requires EPA to develop periodically a list of contaminants not currently subject to drinking water standards, and then make determinations for at least five contaminants as to whether they should be regulated. EPA's draft fourth candidate contaminant list (CCL4), published in the Federal Register Feb. 4, included 100 chemicals or chemical groups and 12 microbial contaminants. Forty items on the draft list were carried over from the CCL3 after the agency failed to make a determination on them.

EPA had asked SAB for recommendations on whether the draft CCL4's support documents were "clear and transparent," whether any additional, peer-reviewed information or data collected should be used in the process, whether any contaminants currently on the draft CCL4 might not merit inclusion in the list and whether there are contaminants not currently included in the draft that should be listed.

In SAB's latest draft of its recommendations on the draft CCL4, dated June 30, the advisory panel is generally supportive of the agency's process for evaluating contaminants although SAB says additional details would aid the reader in understanding and following the decision process for listing contaminants in the draft CCL. SAB members discussed the draft report during an Aug. 3 conference call. The draft report is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183741)

But the advisors are critical of EPA's reliance on public submissions in developing the CCL and say the agency should improve its strategy to "proactively reach out to large utilities, relevant state agencies, and other groups to obtain occurrence information that may be useful in identifying potential candidates for the CCL." Specifically, SAB says EPA should reach out to the Water Reuse Association, the Water Research Foundation, the American Water Works Association and the Water Environment Research Foundation for occurrence data "with an emphasis on contaminants related to water reuse."

The draft report also discusses the role that data from EPA's unregulated contaminant monitoring rule (UCMR) played in creating the draft CCL4 list. EPA uses the CCL process in concert with the UCMR, also required under SDWA, to gather occurrence data for contaminants. It then takes that data to make determinations about what contaminants might be included on the list.

SAB panelist Lloyd Wilson, a research scientist with the New York State Department of Health, questioned the interaction between UCMR and CCL during an April 29 meeting, saying, "It seems a shame we can't use data points from UCMR3 data that already exists and use it to look at the quality of this list" (Inside EPA, May 8).

CCL4 team leader Meredith Russell said at the meeting that UCMR 3 data was not used to inform CCL4 because the monitoring is ongoing until December 2015, then laboratories have at least six more months to submit their data and have a chance to

review it, meaning EPA won't take a look at the UCMR3 until 2016.

But in the draft report, SAB directs the agency to "make use of the data collected under UCMR 3 as it becomes available." In addition, it directs EPA to "perform a standard literature search to identify new and emerging contaminants, and refer to the National Health and Nutrition Examination Survey as an additional source of occurrence data."

One of the major topics of discussion during the Aug. 3 conference call dealt with determining when pathogens do not merit inclusion on the CCL. The draft report says the CCL should not include pathogens that are already addressed with "conventional drinking water treatment."

Currently, EPA's process for the CCL looks at "pathogens of emerging concern, including those associated with biofilms and drinking water distribution systems" as priorities for inclusion, and that anaerobic pathogens and "pathogens that are not endemic to the United States" be candidates for exclusion.

But SAB says those should be reconsidered because they may lead to the exclusion from the CCL of other "potentially significant microbial hazards" -- and that the biofilm and drinking water pathogens EPA prefers to be included could be addressed through conventional drinking water treatment.

The focus on exclusion comes after some groups, including the American Water Works Association, had criticized the CCL4 as carrying over too many chemicals from the previous list, CCL3, and its recommendation that EPA narrow its list of contaminants to more thoroughly research their health effects, rather than its existing "carryover" approach.

However, Wilson suggested on the Aug. 3 conference call that making such a recommendation to EPA could be too lenient and should therefore be listed instead a criteria for "lower prioritization."

"I understand that this monitoring is done as an indicator of a general problem, but I think for the SAB to make a recommendation to exclude all for which conventional treatment is effective is a little problematic," Wilson said. "Also, conventional treatment may have different meanings to different people . . . I would not make this as an absolute. [EPA is] not either," he added. -- Amanda Palleschi

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News Headline: EPA DRAFT PESTICIDE RISK SCREENING PLAN AVOIDS NAS CALL FOR PRIORITIZATION |

Outlet Full Name: Inside EPA

News Text: EPA's just-released draft cumulative risk assessment framework for screening pesticides maintains the agency's past approach of grouping substances based on their similarities, avoiding a National Academy of Sciences (NAS) call to shift to a prioritization scheme based on chemicals' health outcomes, according to a former EPA official.

"The document continues an approach along the line with" the agency's prior cumulative assessments used in assessing the risks from pesticides as part of their registrations, including of the organophosphate and carbamate groups of pesticides, the source says. There is a long-standing debate within the scientific community on whether cumulative risk reviews should begin with a focus on disease or chemical properties, the source adds.

The source says that maintaining EPA's traditional approach to cumulative risk assessment holds benefits, including that it generally allows risk assessors to focus on a smaller group of chemicals at a time. A prioritization approach based on chemicals' health outcomes in contrast would mean focusing on a greater number of chemicals and biological processes earlier, complicating the assessment, the source adds.

Potential risks from combined exposure to all chemicals in a class is one of a variety of issues EPA considers under its Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registration review of pesticides. Advocacy groups have recently called for EPA to speed the reviews of some classes of pesticides, such as neonicotinoids.

On July 30, the agency released for public comment its draft document "Pesticide Cumulative Risk Assessment: Framework for Screening Analysis Purpose," which presents a risk-based approach for identifying groups of chemicals for review. EPA is taking comment on the draft plan through Aug. 28. The document is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183619)

In the draft plan -- dated June 23 but only released on EPA's website last week -- EPA describes cumulative risk assessment as a resource-intensive process that is not necessary or feasible for all chemicals.

And the agency says the new screening approach will allow scientists to prioritize reviews of chemicals by considering substances' toxicity as a factor, as well as potential exposure.

The draft screening plan is based on EPA's prior guidance documents issued in 1999 and 2002 for identifying and assessing cumulative risks from chemicals with a common mechanism of toxicity.

But the document does not mention the NAS' 2008 recommendation for EPA to prioritize cumulative risk reviews by focusing on disease or health outcomes, rather than by chemicals' similarities and level of exposure.

A source with the Natural Resources Defense Council says that EPA should follow NAS' call to focus on health outcomes rather chemical properties. Cutting the number of chemicals in the assessment, the source says, reduces the likelihood that risk assessors will find that a group of substances poses an unacceptable cumulative risk.

The source adds that EPA's approach in the draft document limits the number of pathways through which a chemical may cause an adverse effect, adding that is inappropriate since cumulative exposures present risks through multiple pathways. "EPA should be looking for ways to group chemicals, not [separate] them because people experience them as groups," the source says.

At the time of the December 18, 2008, report, "Phthalates and Cumulative Risk Assessment: The Tasks Ahead," NAS officials called for a paradigm shift in cumulative risk assessment. But NAS acknowledged the change would be difficult given that existing statutes, including FIFRA and the Toxic Substances Control Act, lay out how EPA regulates the sale and use of individual chemicals, not mixtures.

In a July 30 statement announcing the draft framework, EPA says the screening approach will help streamline prioritization of cumulative risk reviews, and cites specific wording of federal law that appears to back prioritization by groups of similar chemicals.

"This screening-level approach will ultimately allow the Agency to address the Federal Food, Drug, and Cosmetic Act requirements to consider available information concerning cumulative effects of pesticides having a common mechanism of toxicity while efficiently using resources."

EPA's draft framework consists of a two-step process for evaluating available toxicological information and, if necessary, conducting risk-based screening. The document details how to identify groups of chemicals for further review based on their structural similarity, toxicological profile, as well as mode of action, which describes biological steps from exposure to a specific chemical to a health effect.

The framework also includes options for whether a screening-level toxicity and exposure analysis is necessary, and says that process would consider prior risk assessments conducted for the individual chemicals in the group, as well as pesticide use patterns and potential dietary and residential exposures.

"The Agency is developing this guidance to assist scientists and decision-makers in screening pesticides for potential common mechanism groupings and conducting screening-level" cumulative risk assessments, EPA says. "Specifically, this document provides guidance for screening available information to identify groups of pesticides that may have a common mechanism of toxicity." -- Dave Reynolds

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News Headline: CORPS' MEMOS COULD BOOST LAWSUIT CLAIMING 'WATERS' RULE VIOLATES NEPA |

Outlet Full Name: Inside EPA
News Text: Internal Army Corps of Engineers memos suggesting the administration's Clean Water Act (CWA) jurisdiction rule should have undergone a full National Environment Policy Act (NEPA) assessment -- despite EPA's position to the contrary -- could potentially boost a lawsuit filed by 13 states claiming that the rule is fundamentally flawed because it violates NEPA.

Instead of conducting a sweeping environmental impact statement (EIS) on the rule's potential adverse impacts and weigh options to mitigate those harms as required by NEPA, the Corps conducted a narrower environmental assessment (EA) and issued a finding of no significant impact (FONSI) to the environment. EPA in contrast claims that rule is exempt from NEPA requirements and that the Corps' EA was done "voluntarily."

"[E]ven if NEPA did apply, preparation of an EIS would not be required," says a recently released EPA response to comments on the final rule, which was published in the June 29 Federal Register. The response to comments is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183731)

But two Corps officials in separate memos issued during the rule's development suggested that a full EIS might be necessary if the agencies did not adopt a number of revisions to the rule, including addressing a provision that limits protections for wetlands, ponds and small waterbodies to areas within 4,000 feet of a stream or river.

House Republicans released the memos as well as a host of other internal documents about development of the CWA rule. They include substantive, often strongly worded critiques of the rule and EPA's economic and scientific analysis supporting the rule, which aim to clarify the scope of the water law. The documents could boost critics' legal claims that the rule is unfounded and arbitrary, according to one attorney.

The Corps officials concerns raised during development of the rule about the need for a broad NEPA EIS analysis of the policy could similarly boost legal claims that the regulation violates NEPA (Inside EPA, July 10).

"I have reviewed all of the attached documents and have concluded that unless the draft final rule is changed to adopt the Corps' proposed 'fixes' or some reasonably close variant of them, then under the National Environmental Policy Act, the Corps would need to prepare an Environmental Impact Statement to address the significant adverse effects on the human environment that would result from the adoption of the

rule in its current form," Major General John Peabody writes in an April 27 memo to Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy.

A separate April 24 memo from the Corps' Regulatory Program Chief Jennifer Moyer to Peabody indicates that it is "not possible" to estimate the specific percentage of the approximately 10 percent of adjacent water bodies that could be lost to CWA protections as a result of application of the 4,000 linear foot limitation from the draft provision, if the rule was finalized the same as the draft that was under development at the time.

"To verify the exact portion of the 10 % of currently jurisdictional waters that would be lost of Federal jurisdiction as a result of adoption of draft final rule in its current form, the Corps would need to complete a robust analysis of its data that would yield statistically significant and reliable results," the memo says. "This is precisely the type of research and analysis that would be undertaken in completing an Environmental Impact Statement (EIS)."

The remarks may add ammunition to a June 29 suit filed in the U.S. District Court for the District of North Dakota's Southeastern Division, by a coalition of 13 states that claims the final rule violates NEPA mandates.

The states that filed the suit are led by North Dakota and include Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming and the New Mexico Environment Department and New Mexico State Engineer, with the lawsuit collectively referring to them as the states.

More than a dozen other states have also sued in district and appeals courts over the rule, but the appellate cases have been consolidated in the U.S. Court of Appeals for the 6th Circuit.

The 13 states' filing says that NEPA requires federal agencies to prepare an EIS for "major" federal actions significantly affecting the environment. But they argue that the Corps decided to forgo an EIS for the CWA rule and instead pursued an environmental assessment and finding of no significant impact to the environment.

They say this violates NEPA because the final CWA rule qualifies as a "major" agency action. "Despite repeated public pronouncements by EPA and Corps officials to the contrary, the Corps admits in its Finding of No Significant Impact that federal jurisdiction under the Final Rule will expand between 2.8 and 4.6 percent as compared to historical determinations of jurisdiction, an estimate that may grossly understate the impact of the Rule," the filing says.

"The Final Rule is highly controversial, as evidenced by approximately 35 states formally opposing the Proposed Rule during the public comment period, and its jurisdictional overreach will create precedent for future actions. The Corps failed to appropriately consider the additional regulatory and economic burdens placed on

states and regulated entities and has not fully analyzed the true effects on the human environment," the states say.

EPA in its June 30 response to comments on "process concerns and administrative requirements" of the rule, says in response to public comments urging an EIS, that the rulemaking is not subject to NEPA at all under section 511(c) of the CWA, and that the Corps prepared the EA "voluntarily."

Moreover, "even if NEPA did apply, preparation of an EIS would not be required," the document says, hinting at the defense that the agency is likely to raise in response to the NEPA legal claims.

The final rule says waters within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas and waters within 4,000 feet of the high tide line or the ordinary high water mark of a jurisdictional waterbody are subject to case-specific "significant nexus" determinations.

The memos from the Corps are among several dated between April 24 and May 15 and were part of the internal dialogue between EPA and the Corps in the run-up to signing the final CWA rule on May 27.

The Corps sent documents to both House and Senate Republicans, including the upper chamber's Environment & Public Works Committee Chairman James Inhofe (OK). Inhofe has criticized the rule as expanding the CWA's reach far beyond what Congress intended, but he did not release the Corps' memos.

The Corps' Darcy, in a letter to Inhofe accompanying the submission of the memos to Congress, sought to downplay the criticism in the letters by arguing that EPA and the Army had addressed many of the Corps' critiques before signing the final rule.

"I emphasize that the Army considered all the input received from the Corps throughout the drafting, vetting, and interagency review processes," Darcy wrote.

She specifically highlighted Moyer's letter, saying "Although received very late in the process, the concerns raised in the Moyer memorandum were in fact considered prior to issuance of the draft final rule.

Darcy also asked legislators not to publicly distribute the memos, noting that the Freedom of Information Act exempts "pre-decisional" documents from release. "Safeguarding these documents is particularly important now that the Army and the EPA are actively involved in litigation associated with publication of the final rule," Darcy warned. But House Republicans subsequently released the documents publicly. -- Bridget DiCosmo

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News Headline: Letter: Asbestos dangers |

Outlet Full Name: Advocate Online, The
News Text: ...of Julian Curtiss School. Today, I read an article in the paper saying asbestos work is there (news story, Aug. 5). I saw white trucks. We...

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News Headline: EPA adds limits on phosphorus in Merrimack River |

Outlet Full Name: Advocate Online, The
News Text: NASHUA, N.H. (AP) — The Environmental Protection Agency is adding limits on phosphorus to its requirements for certification of...

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News Headline: EPA adds limits on phosphorus in Nashua, N.H. |

Outlet Full Name: Foster's Daily Democrat Online
News Text: NASHUA, N.H. (AP) — The Environmental Protection Agency is adding limits on phosphorus to its requirements for certification of...

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News Headline: OSHA Proposes Beryllium Limit Long in Works |

Outlet Full Name: New York Times, The
News Text: After decades of delay, federal workplace regulators on Thursday proposed a sharply lower limit for exposure to beryllium, a widely used industrial mineral, which is linked to a deadly lung disease.

The new standard, proposed by the Occupational Safety and Health Administration, would lower the allowable exposure limit to beryllium to one-tenth the current level. A small percentage of workers exposed to beryllium, a naturally occurring metal, develop a potentially fatal respiratory ailment known as chronic beryllium disease.

Beryllium and alloys containing the light, strong metal are used in the manufacture of aircraft, electronics components, dental implants and nuclear weapons, among other things. While OSHA does not track the number of workers who have chronic beryllium disease diagnosed annually, an agency spokeswoman said officials estimated that there were about 245 new cases every year.

OSHA first proposed lowering the beryllium workplace standard in 1975 but efforts to do so were beaten back over the years by industry resistance, technical debates and political stalling.

Dr. Lee Newman, an occupational expert who has long called on federal regulators to sharply cut beryllium exposure limits, said that while he was heartened by the new proposal, the long delay had exacted a large human toll.

"We've had a generation of workers who've had unnecessary overexposure while this was happening," said Dr. Newman, a professor of public health at the University of Colorado.

While researchers like Dr. Newman long ago produced data showing that exposures to beryllium far below the permitted exposure level could result in chronic beryllium disease, momentum to change that level took shape only about five years ago.

At that point, Materion, the only producer of beryllium in the United States, approached union officials to suggest that they work together to recommend a new standard to OSHA. In 2012, after more than two years of negotiation, the company and the United Steelworkers submitted a joint plan.

In it, they called for cutting the federal exposure standard from 2.0 micrograms per cubic meter of air to 0.2 micrograms, the same reduction urged by Dr. Newman in 1999. In addition, the joint proposal called for medical monitoring of workers to detect early signs of beryllium-related disease.

Such monitoring is critical because, in some people, exposure to beryllium can cause an immunological reaction similar to an allergy. Once a person becomes sensitized to the metal's dust, repeated contact can lead to a buildup of scar tissue in the lungs that can reduce the capacity to process oxygen and lead to death.

Depending on exposure levels, studies suggest 1 to 10 percent of workers may develop sensitivity to beryllium.

James Frederick, the assistant director for health, safety and environment of the United Steelworkers, said it was unusual for a company to approach a union to lobby in collaboration for a tougher workplace standard.

Mr. Frederick said that, while he was unaware of all the factors underlying Materion's decision to push for a new standard, the company had faced a number of lawsuits over the years from beryllium-sickened workers or their families. In addition, while Materion had installed advanced protections in its plants, it could not control how its customers were handling beryllium.

For Materion, which was formerly known as Brush Wellman, the decision to push for a new beryllium standard represented a major turnabout.

In 1996, a lengthy article in The New York Times documented a long-running effort by Brush Wellman officials to block regulatory actions on beryllium and to dispute reports that workers exposed to low levels of the metal were developing chronic beryllium disease. At the time, company officials contended that they had only begun to suspect that health problems could arise at very low exposure levels.

For example, executives told the company's board in the 1990s that preventing any tightening of the federal exposure standard was "fundamental to our defense against product liability lawsuits."

In 1999, a series of articles in The Blade, a Toledo, Ohio, newspaper, documented how the Defense Department allowed workers involved in the production of nuclear weapons to receive high beryllium exposures. Federal officials have established a fund to compensate sickened nuclear facility workers.

Dr. David Michaels, the director of OSHA, said that he was pleased the new proposal was moving forward and that the agency hoped to have it completed by late 2016. Agency officials estimate the new rule will prevent close to 100 deaths annually.

In the coming months, the proposal will undergo a period of public comment. It could run into resistance from industries that believe they should not be covered by the new requirement. But Dr. Michaels is optimistic.

"In some ways, this is the final chapter of making peace with the past," he said. "Once we finish, these workers will be protected and we will end the epidemic of beryllium exposure in the United States."

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News Headline: ATRS Recycling Sets New Record for Clothing Donations Collected in Tucson AZ |

Outlet Full Name: Boston.com
News Text: Clothing & Shoe Recycling program diverts pounds from landfill and creates much needed funding for local chapter of MADD. Tucson, AZ (PRWEB)...

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News Headline: Newark recycling plant fined $53,900 for safety violations |

Outlet Full Name: Associated Press (AP)
News Text: NEWARK, N.J. (AP) - The U.S. Department of Labor says a Newark

recycling plant has been cited for violations that left its employees susceptible to injuries, including amputations.

NJ.com reports (http://bit.ly/1T9CZDr) G&F Recycling and Salvage, Inc. received 14 violations following a July 16 inspection by the Occupational Safety and Health Administration.

OSHA says the company was fined $53,900 in connection with the violations.

Kris Hoffman, director of OSHA's Parsippany Area Office, says the health hazards found at G&F put workers at risk of being seriously injured or even killed.

OSHA says workers were exposed to amputation hazards while repairing machines without having procedures to prevent equipment from starting up, among other safety concerns.

G&F did not immediately respond to a phone call requesting comment on the citations.

Information from: NJ Advance Media.

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News Headline: Feds support anti-algae program in southern Michigan |

Outlet Full Name: Associated Press (AP)
News Text: TRAVERSE CITY, Mich. (AP) - A program designed to reduce nutrient runoff into a Lake Erie tributary stream in southern Michigan is picking up federal support.

The Hillsdale Conservation District works with farmers to design and carry out conservation practices such as planting cover crops. Such measures help prevent phosphorus and nitrogen from flowing into waterways, where they can feed harmful algae blooms.

The federal Great Lakes Restoration Initiative is contributing more than $113,000 to the Hillsdale program. It focuses on the St. Joseph River, a tributary of the Maumee River that flows into Lake Erie.

It's a different river than the St. Joseph in western Michigan.

Harmful algae-like bacteria on Lake Erie produce toxins that have fouled drinking water, created oxygen-starved "dead zones" and limited swimming and other water

activities.

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News Headline: Settlement reached in Commencement Bay pollution case |

Outlet Full Name: Associated Press Online
News Text: ...and Muckleshoot tribes and others had sought to make those responsible for pollution in the Thea Foss and Wheeler-Osgood Waterways to pay...

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News Headline: EPA Urged To Support Stormwater 'Coalitions' To Ease Regulatory Burdens |

Outlet Full Name: Inside EPA
News Text: Site License Available Economical site license packages are available to fit any size organization, from a few people at one location to...

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News Headline: EPA PUSH TO EASE CWA RULE IMPLEMENTATION FAILS TO QUELL CALLS FOR DELAY |

Outlet Full Name: Inside EPA
News Text: EPA is pledging to quickly release a suite of tools to ease implementation of its Clean Water Act (CWA) jurisdiction rule including a question-and-answer (Q&A) document and database of jurisdictional findings to resolve uncertainty, but the move is failing to quell calls from the rule's critics to postpone by many months its Aug. 28 effective date.

In a July 30 joint memo, EPA Administrator Gina McCarthy and Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy say their agencies "must focus immediately" on developing tools for the jurisdiction rule that they jointly developed, signed in May, and published in the June 29 Federal Register. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183598)

The memo lists as top priorities a "comprehensive Question and Answers document," an automated tracking system and database for jurisdictional determinations (JDs) made under the rule, and an EPA-Corps workgroup that will by the end of 2015 recommend ways to streamline the CWA permitting process.

Although the memo does not set a hard deadline for releasing the JD database, it sets a goal of publishing the Q&A resource before the rule takes effect. In general, it urges agency staff to act "as soon as possible" and says "The next 60 days are particularly important as we work to be fully prepared to apply the Rule when it becomes effective."

McCarthy previously vowed to craft a database aimed at making public any implementing decisions over the rule, as well as to issue a joint memo with the Army Corps of Engineers to ensure consistency in the two agencies' implementation of the rule.

However, the July 30 letter says EPA and the Corps have no plans to issue a formal implementation guide on the waters rule, in part because the final regulation "provide[s] clear and comprehensive direction regarding the process for conducting jurisdictional determinations."

The letter also says that the pending Q&A document will serve the same purpose that formal guidance would. McCarthy and Darcy say their agencies will jointly prepare the document "based on discussions with field staff, negating the need for any new manual or guidance documents."

The agencies say that the database, which McCarthy previously discussed only generally, will list information on both JDs that find jurisdictional waters and those that certify waterbodies as not protected by the CWA, as well as "the nature and number of pending determinations."

The data will be compiled "on a District-wide and Regional basis. . . . The Corps and EPA headquarters will develop national summaries of this information on a quarterly basis and make it publicly available," the memo says.

McCarthy and Darcy also say in the memo that their offices will develop a memorandum of understanding outlining the agencies' procedures and responsibilities for maintaining and publicizing the database.

Their memo also outlines the aspects of the CWA permit program that the joint workgroup will investigate before making recommendations to agency headquarters.

The workgroup will "evaluate existing permitting tools and procedures and identify the changes needed to further reduce costs, delays and frustration in federal permitting, while improving CWA protections."

The letter adds that, "The workgroup will focus on the appropriate use of tools such as general permits (Nationwide Permits), increasing the availability of information on issued permits on which new applicants could rely in designing projects, and improved coordination with federal and state permitting partners to reduce overlap and redundancy in permit reviews."

All three implementation tools listed in the memo are being developed based on the rule taking effect on Aug. 28 -- two months after its publication in the Register.

But a coalition of 32 states is asking EPA and the Corps to delay that date by nine months in order to allow the litany of suits by states, industry and environmentalists challenging the rule to proceed.

"Although the states promptly filed their actions challenging the [CWA] rule, it will necessarily take some time for the courts to resolve the merits of these various cases with their different claims. . . . A federal regulation demands a thorough judicial review before imposing costly and disruptive burdens on the states and their citizens," reads a July 30 letter to McCarthy and Darcy signed by the attorneys general of 32 states.

The letter outlines some of the states' rationales for suing over the CWA rule, including that it infringes on the cooperative federalist structure of the water law by removing states' authority to manage their waters; that it requires states to commit new resources to protecting waterbodies that should not be subject to federal protections; and that it will impact a variety of industry sectors subject to CWA mandates.

"Given the gravity of the Constitutional issues implicated by the states' claims and to avoid these hardships, the courts should be granted an opportunity to resolve the pending challenges," the letter says. -- David LaRoss

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News Headline: HOUSE GOP'S RELEASE OF CRITICAL CWA MEMOS MIGHT BOOST SUITS OVER RULE |

Outlet Full Name: Inside EPA
News Text: House Republicans have released several Army Corps of Engineers memos circulated during the development of the Clean Water Act (CWA) jurisdiction rule jointly developed with EPA where the Corps faults the legal and scientific basis for the then-pending rule, potentially boosting pending lawsuits that claim the rule is unlawful.

The Corps memos, dated between April 24 and May 15, were part of the internal dialogue between EPA and the Corps in the run-up to signing the final CWA rule on May 27. They include substantive, often strongly worded critiques of the rule and EPA's economic and scientific analysis supporting it, all of which could boost critics' legal claims that the rule is unfounded and arbitrary, according to an attorney tracking litigation over the rule. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183623)

"The courts in these cases are supposed to look at reasoned decision-making: Did the agency connect the dots? So the more litigants are going to be able to show that there was significant disagreement that didn't get resolved, and that some of the assumptions on which the rule was based aren't actually supported by the record -- that's red meat for a judicial vacatur," the source says of the memos showing disagreement between the agencies.

EPA and the Corps released the rule publicly in May then published it in the Federal Register in June, with an effective date of Aug. 28. Several lawsuits over the policy have already been filed in federal district courts, while appellate cases over the rule have been consolidated in the U.S. Court of Appeals for the 6th Circuit.

Late last month, EPA and the Corps issued a memo in which it pledged to quickly release a suite of tools to ease implementation of the rule including a question-and-answer document and database of jurisdictional findings to resolve uncertainty, though several states are urging the agency to delay the rule's implementation by many months.

The agencies said in the final rule that it is considered issued for purposes of judicial review at 1 p.m. Eastern time on July 13. Critics of the regulation argue that it expands the CWA's reach far beyond what Congress intended, and the attorney suggests that the released memos could bolster opponents of the rule.

For instance, an April 24 letter signed by Major General John Peabody, Deputy Commanding General for Civil and Emergency Operations, says, "The rule's contradictions with legal principles generates multiple legal and technical consequences that, in the view of the Corps, would be fatal to the rule in its current form."

In a separate April 24 memo to Peabody, Lance Wood, the Corps' assistant chief counsel for environmental law and regulatory programs, says the then-draft version of the final rule "contains several serious flaws. If the rule is promulgated as final without correcting those flaws, it will be legally vulnerable, difficult to defend in court, difficult for the Corps to explain or justify, and challenging for the Corps to implement."

Those comments appear to give new support to claims by the array of state and industry plaintiffs that are already asking federal district and appellate courts to invalidate the CWA rule as unlawful or unconstitutional (Inside EPA, July 24).

While most of the memos' criticism tends to align with industry and state arguments that the rule is poorly justified, some of it could also back environmentalists' arguments to overturn a provision restricting protections for wetlands, ponds and small waterbodies to areas within 4,000 feet of a stream or river.

In their lawsuits, advocates are claiming that restriction means the rule fails to protect many endangered species such as salmon and sturgeon.

"[T]he 4,000-foot limit arbitrarily cuts off which waters can be determined [to be] 'similarly situated' . . . The TSD recognizes that floodplains of large river systems are much greater than 4,000 feet from" the river's high water mark, Corps Regulatory Program Chief Jennifer Moyer wrote in a May 15 memo.

Corps officials provided the memos to the Senate Environment & Public Works Committee (EPW) and the House Committee on Oversight and Government Reform earlier in July (Inside EPA, July 31).

But an accompanying letter from Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy asked legislators not to publicly distribute them, noting that the Freedom of Information Act (FOIA) exempts "pre-decisional" documents from release. "Safeguarding these documents is particularly important now that the Army and the EPA are actively involved in litigation associated with publication of the final rule," Darcy warned.

Critics of the CWA rule have already cited quotes from the memos to argue that the Corps had major concerns about the rule and that EPA failed to fully consult the Corps or address the concerns -- which, they say, undermines the legal basis for the rule.

However, while EPW Chairman Sen. James Inhofe (R-OK) only published excerpts from the memos, the House panel posted them in full as part of the record from a June 29 hearing on the agency's treatment of sexual harassment claims among its staff. The files posted by the committee include stamps on each page reading "For Committee Use Only -- Litigation Sensitive".

EPW staff did not response to a request for comment on the memos, and the House committee did not release a statement on its publication of the documents.

The attorney tracking the case says the release of the memos could have a major impact on the challenges because not only do they seem to support the challengers' claims about flaws in the rule, but they were also unlikely to be published otherwise, either in response to FOIA requests or as part of the litigation process.

That is because in a rule challenge, the agencies are responsible for compiling and submitting to the court an "administrative record" including all the documents they considered in the rulemaking process, and courts generally defer to the government on which documents should be considered part of the record.

"Normally the administrative record wouldn't include these interagency memos, this sort of policy advice. Now, even if EPA and the Corps don't include these letters themselves, you can bet the challengers will file them. . . . And the more the record is

messy and has contradictions, the more it reveals," the attorney says.

In her letter accompanying the submission to Congress, Darcy sought to downplay the criticism in the letters by arguing that EPA and the Army had addressed many of the Corps' critiques before signing the final rule.

"I emphasize that the Army considered all the input received from the Corps throughout the drafting, vetting, and interagency review processes," Darcy says in her letter to Inhofe.

And she specifically highlights Moyer's letter, saying "Although received very late in the process, the concerns raised in the Moyer memorandum were in fact considered prior to issuance of the draft final rule."

But the attorney tracking the legal challenges says that regardless of Darcy's comments, it will likely be up to the courts to weigh whether regulators properly considered the Corps' concerns in the final rule.

"What we don't know from where we're standing now is how accurate [Darcy's letter] is -- whether they really did address these issues or if they're just papering that over now." -- David LaRoss

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News Headline: EPA WITHDRAWS CWA PERMIT CONTESTED IN EAB DEFERENCE CASE |

Outlet Full Name: Inside EPA
News Text: EPA has withdrawn a Clean Water Act (CWA) permit for a Massachusetts wastewater treatment plan and will reconsider the permit limits, which will end a pending Environmental Appeals Board (EAB) challenge to the permit that was seen as a potential test of the deference judges will give the agency on permitting decisions.

An attorney for the appellants in the EAB suit, Brattle Road Farm Condominium Trust v. EPA, says the parties involved are preparing a joint motion for dismissal after EPA Region 1 filed a notice dated July 30 that it was voluntarily vacating federally-crafted permit limits that the trust said were arbitrary or unlawful. The notice is available on InsideEPA.com. See page 2 for details. (Doc. ID: 18366)

"[T]he Regional Administrator may withdraw portions of a contested permit and prepare a new draft permit . . . addressing the portions so withdrawn at any time prior to thirty (30) days after filing the response to the petition. The Region has decided to exercise that right," the July 30 notice says.

The attorney says EPA's withdrawal of the permit provisions ends the appeal. "The process is that we go back and re-start the permit process, and hopefully come out of it with a better permit."

Brattle Road's petition to EAB argued that EPA failed to justify phosphorus limits for the trust's Lincoln, MA, wastewater treatment plant, including applying strict discharge limits in contradiction of the state's own reading of its water quality rules (Inside EPA, July 17).

The petition also challenged limits on cadmium and lead that EPA had included without a compliance schedule despite the trust's claims that stringent discharge limits were not immediately achievable.

Region 1 is withdrawing the phosphorus limit in its entirety, and the cadmium and lead limits "insofar as they are not subject to schedules of compliance," the notice says.

If the Brattle Road case had proceeded to a ruling on the merits, it could have tested the reach of a 2012 ruling by the U.S. Court of Appeals for the 1st Circuit on another EPA-crafted CWA permit in Massachusetts, Upper Blackstone Water Pollution Abatement District v. EPA.

In that case -- which, like Brattle Road, dealt with a phosphorus limit based on the agency's Gold Book reference standard -- a unanimous panel held that courts should treat the agency's decisions in crafting permits based on narrative standards with "extreme deference," and specifically upheld EPA's use of reference studies that the water district argued were inapplicable to local conditions.

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News Headline: HOUSE GOP 'LEASE' PLAN SEEKS TO EASE CWA MITIGATION PROJECT OBLIGATIONS |

Outlet Full Name: Inside EPA
News Text: A pending House GOP bill seeks to ease Clean Water Act (CWA) permit holders' obligations to create mitigation banks used to offset damage to waters from permitted activities by establishing a novel "lease" program to terminate the obligations after the permitted activity on the project that they are designed to mitigate is complete.

The legislation could gain attention in the coming weeks and months given expectations that EPA and the Army Corps of Engineers' joint CWA jurisdiction rule could boost creation of mitigation banks, because the rule is likely to drive more CWA permitting in regions that have previously seen scant mitigation (Inside EPA, June 26).

H.R. 3271, introduced July 28 by Rep. Don Young (R-AK), would amend the water law to establish a "preservation leasing" program, under which permit holders could agree to pay for state or tribal lands to be preserved for compensatory mitigation only until permitted activity on the project they are designed to mitigate is complete.

The bill would require water permit holders to complete "a restoration and rehabilitation plan" incorporated into their CWA permit terms when their project activity ceases. The plans would require restoring both "the hydrological functions and fish and wildlife habitat of the area impacted by the permitted activity." When the plan is fulfilled, "the land subject to the lease shall revert back to the State or Indian tribe, as appropriate, without restriction," according to the legislative text. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183735)

When builders seek a CWA section 404 permit that involves the destruction of wetlands or streams, they have to include in their application mitigation measures, which demonstrate what the applicant intends to do to offset the destruction. Mitigation of wetland damage is most often done through banking, under which property owners can build, enhance or restore wetlands to counter the destruction of wetlands elsewhere.

But Young -- chairman of the House Natural Resources Committee's Indian, Insular and Alaska Native Affairs subcommittee -- is arguing that the requirement for land to be permanently set aside for mitigation is too harsh and discourages the use of the section 404 permits. He claims in a statement on the bill that mitigation leasing would remedy the problem while rewarding permittees for restoring water quality.

In the statement, Young's office said "Projects typically have a lifespan, and require rehabilitation and reclamation as a condition of the permit. However, current regulations offer options to offset the impacts of the project that permanently lock up lands through preservation easements. Congressman Young believes locking up land into perpetuity is incongruent to the project impacts, and often is a major disincentive for projects."

EPA and the Corps issued a joint compensatory mitigation rule in 2008 that established uniform standards for such efforts, allowing permittees to use several methods for offsetting lost wetlands services.

These methods include either a mitigation bank -- the preferred option -- or third-party broker to replace the lost wetlands with newly constructed wetlands, provided the new wetlands are placed in the same watershed as the dredge-and-fill activity to address factors like local hydrology, ecological benefits and land use.

Under the rule, a seller of wetland bank credits must meet certain criteria, including guarantees that the wetlands that are created through the bank will remain in

perpetuity.

H.R. 3271 would change that mandate. "Ultimately, Congressman Young believes land should not be locked up for perpetuity, and mitigation should better reflect [the] life of project," the statement says.

Young's introduction of H.R. 3271 on July 28 comes as observers are expecting use of the section 404 mitigation program to rise as a result of the recently finalized EPA-Corps CWA jurisdiction rule.

The rule could prompt expansion of compensatory mitigation given that it is likely to require more section 404 permits to be issued, and may expand permitting to areas that previously have not seen much in the way of mitigation activity -- bringing in regulators who have not previously dealt with the program at length.

The rule could increase interest in options for mitigating damage to streams because it would formally extend CWA jurisdiction to all "tributaries" or waters that contribute flow, either directly or through another water to a jurisdictional waterbody characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark.

Mitigation is often more limited for section 404 projects impacting streams than in cases that involve wetlands, because they often involve simple stream crossings rather than more extensive fills.

A wetlands source has told Inside EPA that the Obama administration should consider crafting a national plan for enhancing stream mitigation policies similar to the 2002 National Wetlands Mitigation Plan, laying out a number of areas in need of further dialogue between stakeholders.

For example, an April 2014 "Report on State Definitions, Jurisdiction and Mitigation Requirements in State Programs for Ephemeral, Intermittent and Perennial Streams in the United States," crafted by the Association of State Wetland Managers (ASWM) for EPA, made a host recommendations for facilitating more widespread and uniform mitigation practices.

The ASWM report found that 13 states have their own formal state-coordinated stream mitigation program, and an additional nine states report having state stream mitigation "practices," but no formal program, and 18 states leave mitigation decisions to the Corps. -- David LaRoss

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News Headline: City, EPA negotiate phosphorus limits put in Merrimack River |

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News Headline: EPA: Connecticut firm settles over allegations of records violations
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Outlet Full Name: Middletown Press - Online
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